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Federal Acquisition Regulations System

48

CHAPTER 29 TO END

Revised as of October 1, 1998

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1998

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 2901.100 *refers to title 48, part 2901, section 100.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency's name appears at the top of odd–numbered pages.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

October 1, 1998.

THIS TITLE

Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of eight volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1998.

The Federal acquisition regulations in chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapters 2 through 99 are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of chapters 2 through 99 are reserved for agency regulations *implementing* the Federal acquisition regulations in chapter 1 and are numerically keyed to them. Parts 70 to 99 in chapters 2 through 99 contain agency regulations *supplementing* the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in section 1.106 of chapter 1. For the convenience of the user section 1.106 is reprinted in the Finding Aids section of the second volume containing chapter 1 (parts 52 to 99).

The first volume, containing chapter 1 (parts 1 to 51), includes an index to the Federal acquisition regulations.

For this volume, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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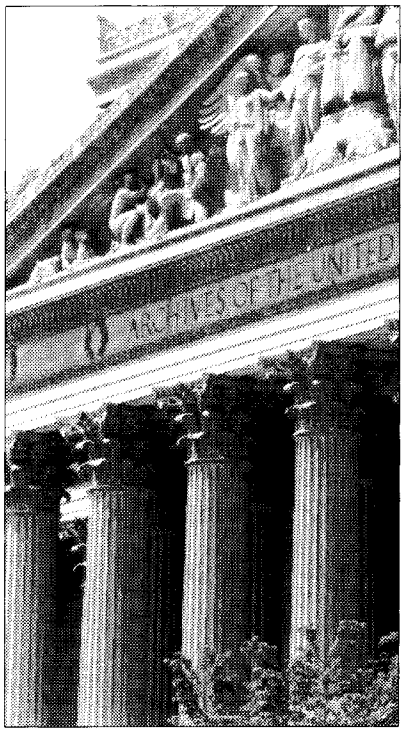

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AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8914, Mar. 5, 1985, unless otherwise noted.

Subpart 2901.1—Regulation System

2901.100 Scope of subpart.

This subpart sets forth introductory information pertaining to the Department of Labor Acquisition Regulation, referred to as the DOLAR. This subpart explains the relationship of the DOLAR to the Federal Acquisition Regulation (FAR) and explains the DOLAR's purpose, authority, applicability, exclusions, and issuance.

2901.101 Purpose.

(a) This subpart establishes chapter 29, the Department of Labor Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations.

(b) The purpose of the DOLAR is to implement the FAR, where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DOLAR is not by itself a complete document as it must be used in conjunction with the FAR.

2901.102 Authority.

The DOLAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of DOL Temporary Regulation Number 44, dated February 18, 1983, in accordance with section 1 of the Act of March 4, 1913 (29 U.S.C. 551, 37 Stat. 736), as amended; 5 U.S.C. 301, and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

2901.103 Applicability.

The FAR and DOLAR apply to all DOL acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this regulation.

2901.103–70 Exclusions.

Certain DOL policies and procedures which might otherwise come within

the scope of this regulation may be excluded from the DOLAR where there is appropriate justification, such as:

(a) Subject matter that is procedural in nature and internal to the operation of the Department. These matters are contained in the Department of Labor Manual Series (DLMS).

(b) Instructional or training material that more fully explains matters covered in the FAR and DOLAR.

(c) Unless otherwise specifically stated, subject matter which deals with assistance programs where the award instruments are other than acquisition contracts. Administrative requirements governing all grants and agreements by which Department of Labor agencies award funds to State and Federal Governments, Indian and Native American entities, public and private institutions of higher education and hospitals, and other quasi-public and private nonprofit organizations are codified separately at part 29–70 of title 41 of the Code of Federal Regulations.

2901.104 Issuance.

2901.104–1 Publication and code arrangement.

(a) The DOLAR and its subsequent changes are published when issued in daily issues of the FEDERAL REGISTER and in cumulative form in the Code of Federal Regulations.

(b) The DOLAR is issued as chapter 29 of title 48 of the Code of Federal Regulations.

2901.104–2 Arrangement of regulations.

(a) *General.* The DOLAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DOLAR part, subpart, etc.

(b) *Numbering.* Where DOLAR implements the FAR, the implementing part, subpart, section or subsection of the DOLAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 29 or a 290 such that there will always be four numbers to the left of the first decimal. For example, the DOLAR implementation of FAR 1.104–1 is shown as 2901.104–1 and DOLAR implementation of FAR subpart 24.1 is shown as subpart 2924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, DOL regulations governing appointment and termination of appointment of contracting officers' representatives is identified as 2901.603–70.

(c) *References and citations.* (1) This regulation may be referred to as the Department of Labor Acquisition Regulation or the DOLAR.

(2) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104–2(c)(2). References to DOLAR materials within the regulation will simply cite the identifying number, for example, 2901.104–2(c)(2).

2901.104–3 Copies.

Copies of the DOLAR published in the FEDERAL REGISTER or Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Requests should reference the DOLAR as chapter 29 of title 48. The Code of Federal Regulations is printed in paperback edition with updates as needed, and revised as of October 1 of each year. Requests for the CFR version of the DOLAR should reference chapter 29 of title 48.

Subpart 2901.2—Administration

2901.201 Maintenance of the FAR.

2901.201–1 The Civilian Agency Acquisition Council.

(a) The Department of Labor shall be represented on the Civilian Agency Acquisition Council by a staff member of the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, appointed for that purpose by the Director, Directorate of Procurement and Grant Management.

(b) The Office of Procurement and Grant Policy will be responsible for coordination with all interested DOL elements regarding proposed FAR revisions and advocating revisions sought by DOL.

Subpart 2901.3—Agency Acquisition Regulations

2901.301 Policy.

(a) The Department of Labor Acquisition Regulation (DOLAR) System consists of policies, procedures and regulations which implement or supplement the FAR at specific levels within the Department of Labor. The Federal Acquisition Regulation (FAR) and the DOLAR System govern the contracting process and control contracting relationships between contractors and the Departments' agencies and offices.

(b) The DOLAR is issued pursuant to the authority of the Secretary of Labor under 5 U.S.C. 301, 29 U.S.C. 551, 40 U.S.C. 486(c), and other authority specifically stated, and is subject to the overall authority of the Administrator of General Services. See FAR 1.301(c)(3).

2901.302 Limitations.

DOLAR System issuances are limited to:

(a) Published, codified, Department-wide regulations which implement or supplement FAR policies and procedures and which affect organizations or individuals seeking to contract with the Department;

(b) Published, codified, lower-level regulations of agencies and offices which contain additional policies and procedures that supplement the FAR to satisfy the specific and unique needs of the agency or office.

2901.303 Codification and public participation.

(a) Published issuances under the DOLAR are codified under chapter 29 in title 48, Code of Federal Regulations and parallel the FAR in format, arrangement and numbering system.

(b) Regulations codified under chapter 29 are limited to those affecting private or public, profit or not for profit concerns, organizations or individuals desiring to enter into contracts with the Department. Public participation procedures used in the promulgation of codified regulations under the DOLAR System will follow procedures of FAR subpart 1.5.

2901.304 Agency control and compliance procedures.

(a) The DOLAR System is under the direct oversight and control of the Director, Directorate of Procurement and Grant Management. Procedures for review and approval of issuances under the DOLAR System comply with FAR subparts 1.3 and 1.4. These procedures are contained in 2901.6.

(b) DOLAR System issuances shall comply with the restrictions in FAR 1.304(b) and the limitations in 2901.302. DOL Agencies and offices may implement or supplement the FAR or DOLAR with internal instructions not applicable DOL-wide. Additionally, they may request publication in the DOLAR of procurement instructions and other procurement material considered of interest to the general public. Such instructions shall not duplicate higher-level coverage and shall be numbered in accordance with FAR 1.104–2 except that the numbers prescribed there and in 2901.104–2 shall be suffixed by the alphabetic abbreviation or other symbol of the respective Agency issuing the instructions. Each DOL Agency and office shall establish, at the headquarters level, review and approval procedures for maintaining oversight and control of all DOLAR System issuances for their respective Agency or office. These procedures shall include methods to prevent unnecessary duplication of higher-level coverage; ensure consistency and uniformity among issuances; control the number of directives issued; update directives; and distribute copies.

(c) DOL Agencies and offices shall submit all proposed instructions and materials that implement or supplement the DOLAR to the Director, Directorate of Procurement and Grant Management, for review in conjunction with the Solicitor prior to their publication. All issuances, whether or not published as a part of the DOLAR System, shall be submitted for review. In the case of internal procurement instructions, the purpose of the review is

to ascertain that such instructions are consistent with the FAR and the DOLAR and that they do not contain information which should be issued as the DOLAR.

Subpart 2901.4—Deviations From the FAR and DOLAR

2901.403 Individual deviations.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve deviations from FAR provisions (see FAR 1.403) or DOLAR provisions which affect only one contracting action.

(b) Requests for deviations under paragraph (a) of this section shall be submitted by the head of the contracting activity and include justification as to why the deviation is required.

(c) A copy of the approved deviation shall be included in the contract file.

2901.404 Class deviations.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve class deviations of FAR or DOLAR provisions which affect more than one contracting action.

(b) Requests for deviations under paragraph (a) of this section, shall be submitted by the head of the contracting activity and include justification as to why the deviation is required and the number of contracting actions which will be affected.

(c) A copy of each approved class deviation shall be referenced in the contract file.

(d) Recommended revisions to the FAR and a copy of each approved class FAR deviation shall be transmitted to the FAR Secretariat by the Director, Directorate of Procurement and Grant Management, as required in FAR 1.404.

2901.405 Deviations pertaining to treaties and executive agreements.

(a) The Director, Directorate of Procurement and Grant Management, is responsible for transmitting to the FAR Secretariat the information required in FAR 1.405 (d) and (e).

Subpart 2901.6—Contracting Authority and Responsibilities

2901.601 General.

This subpart deals with contracting authority and responsibilities of the head of the agency as defined in 2901.1 and 2902.1, FAR subpart 1.6 and this subpart.

2901.602 Contracting officers.

2901.602–1 Authority.

Information on the limits of contracting officers' authority shall be maintained by the head of each contracting activity as required in FAR 1.601–1. The Directorate of Procurement and Grant Management shall also maintain this information.

2901.603 Selection, appointment, and termination of appointment.

2901.603–1 General.

(a) *First tier delegation*. The Assistant Secretary for Administration and Management (ASAM), acting through the Procurement Executive, is the chief departmental official for all acquisition and grant matters as outlined in Secretary's Order 4–76, for:

(1) Prescribing policies, procedures, and standards regarding the solicitation, award, and administration of all DOL acquisitions and grants for financial assistance (*e.g.*, cooperative agreements, grants, and similar instruments) obligating Federal funds for the purpose of:

(i) Obtaining property and services for the DOL and/or third parties.

(ii) Promoting DOL programs and objectives through financial assistance.

(2) Acquiring property and services for the United States Government under Title I of the Federal Property and Administrative Services Act of 1949 (63 Stat. 379).

(3) Establishing reporting requirements necessary for effective departmental acquisitions and grant management and for complying with data needs promulgated by the Office of Management and Budget (OMB), the General Services Administration (GSA), the General Accounting Office

(GAO), and other agencies. This includes the SF–1099 report, ''Income Other Than Wages,'' and ''Federal Procurement Data System'' (FPDS) and ''Federal Assistance Award Data System'' (FAADS) input.

(b) In the Department of Labor, contracting officer and grant officer authority and responsibility have been delegated from the Secretary of Labor through the Assistant Secretary for Administration and Management (ASAM) to the following officials or officers acting in their behalf:

(1) The Assistant Secretary for Employment and Training.

(2) The Assistant Secretary for Occupational Safety and Health.

(3) The Deputy Under Secretary for Employment Standards.

(4) The Assistant Secretary for Mine Safety and Health.

(5) The Deputy Under Secretary for International Affairs.

(6) The Commissioner of Labor Statistics.

(7) The Inspector General.

(8) The Regional Administrators—OASAM.

(9) The Director, National Capital Service Center, OASAM.

(c) *Delegations and limitations.* Subject to the limitations set forth in this paragraph and paragraph (g), the officials designated in paragraph (b) possess full authority to obligate the U.S. Government through the use of contracts, agreements, orders, grants, and/or other similar instruments. This authority includes obligating Federal funds for the purpose of obtaining property and services for the government and/or third parties, or for the purpose of promoting DOL programs or objectives through financial assistance. Each official designated in paragraph (b) (except the Inspector General), is delegated authority and responsibility for issuing purchase orders for purchases under GSA Federal Supply Schedules, FEDSTRIP, and from open-market sources not to exceed the small purchases limitation. Acquisition of typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. Acquisitions of copier equipment require prior approval of the Directorate of Administrative Services and Safety and Health Programs. Paragraph (g)(2) outlines limitations on the purchase, lease and renewal of lease(s) of ADP equipment, software and services. Approval authority for competitive acquisition of consulting and related services costing less than $50,000 cannot be redelegated by the head of the contracting activity. Other delegations in this section may be further redelegated by the designated officials within their areas of assigned responsibility, except that small purchase authority delegated to the Assistant Secretary for Employment and Training, the Assistant Secretary for Occupational Safety and Health, the Deputy Under Secretary for Employment Standards, and the Commissioner of Labor Statistics is limited to the National Office only and may not be redelegated to the Regional Offices. Before issuing redelegations, contracting officers should consider the following factors to determine the extent to which authority shall be redelegated:

Volume of contracting programs; presence of, or capability of obtaining adequately trained personnel; consolidation of smaller contracting programs and offices on a geographical basis; and the overall strengthening of the acquisition process by the selection of qualified personnel. Criteria for selection, appointment and termination of Contracting/Grant Officers are contained in the Department of Labor Manual Series (DLMS–2) Chapter 800. Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. An information copy of every further redelegation must be furnished to the OASAM, Directorate of Procurement and Grant Management.

(d) *Responsibilities.* The following redelegations are made subject to the requirements and exceptions outlined in paragraph (g) regarding prior approval requirements and the limitations on authority to issue purchase orders and contracts for the purchase, lease and

renewal of lease(s) for ADP equipment, software and services; and acquisition of consulting and related services.

(1) The Assistant Secretary for Employment and Training, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Obtaining all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Employment and Training.

(ii) Approval of all grantee acquisitions of ADP equipment, software and services using grants-in-aid to State and local governments.

(iii) Establishing and maintaining an imprest fund.

(2) The Assistant Secretary for Occupational Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Issuance of grant agreements with States as required under the statutory and regulatory requirements imposed on the Assistant Secretary for Occupational Safety and Health.

(ii) Reimbursements to States, pursuant to section 7(c)(1) of the Occupational Safety and Health Act of 1970 (OSH Act of 1970) (29 U.S.C. 656(c)(1)) for State services, facilities, and personnel used to carry out the statutory and regulatory responsibilities imposed on the Assistant Secretary for Occupational Safety and Health.

(iii) Issuance of grants, pursuant to section 21(b) of the OSH Act of 1970 (29 U.S.C. 670(b)) for short term training of personnel.

(iv) Issuance of grants to nonprofit organizations for implementation of the expanded Employer-Employee Training Program under section 21(c) of the OSH Act of 1970 (29 U.S.C. 670(c)).

(3) The Deputy Under Secretary for Employment Standards, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Entering into agreements with States to enhance Federal/State cooperative efforts for the administration of comparable employment standards programs.

(ii) Procuring medical services necessary for the adjudication of claims for injury and occupational disease filed by Federal employees in accordance with the Federal Employees Compensation Act (5 U.S.C. 8101, *et seq.*) and the Federal Coal Mine Health and Safety Act of 1969, as amended (Pub. L. 91–173, 83 Stat. 742).

(4) The Assistant Secretary for Mine Safety and Health, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Mine Safety and Health.

(ii) Issuing grants as required by the Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*).

(iii) The purchase, lease, or renewal of lease(s) of ADP equipment, software and services costing $100,000 or less without prior approval of the Directorate of Information Resources Management (DIRM), OASAM. Requirements shall not be fragmented in order to circumvent this $100,000 threshold. ADP equipment, software or services costing more than $100,000 require prior approval of DIRM. Prior approval of DIRM for ADP equipment, software, or services costing less than $100,000 is also required when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201–23.104.

(5) The Deputy Under Secretary for International Affairs, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supplies and services required in support of training and orientation of foreign nationals.

(ii) Acquisition of supplies and services required in support of overseas exhibitions required under statutory and regulatory responsibilities imposed on the Deputy Under Secretary for International Affairs.

(iii) International responsibilities not funded by an annual appropriation.

(6) The Commissioner of Labor Statistics, or an officer acting in that capacity, is delegated authority and responsibility for:

(i) Acquisition of supporting statistical economic research services, required under the statutory and regulatory responsibilities imposed on the Commissioner of Labor Statistics.

(ii) Selling special statistics developed by the Bureau of Labor Statistics

in accordance with the Act of April 13, 1934 (29 U.S.C. 9 *et seq.*).

(7) The Inspector General, or an officer acting in that capacity, is delegated authority and responsibility for contracting with State and local agencies for audit services in accordance with section 4 of the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 503).

(8) The Regional Administrators—OASAM, or officers acting in that capacity, are delegated authority and responsibility within their respective regions, for:

(i) The acquisition of property and services required for the Regional Offices, including all imprest fund purchases, GSA Federal Supply Schedule purchases, and open-market purchases. The acquisition of records equipment when the cost does not exceed the small purchases limitation for a single system. Purchases for typewriters, office copiers, adding machines, and calculators must be written against blanket purchase orders maintained for such equipment by the National Capital Service Center, OASAM. The purchase of copier equipment requires prior approval of the Directorate of Administrative Services and Safety and Health Programs.

(ii) Contracting for ADP operational services to support regional remote job entry capabilities. This authority does not include the purchase, lease, or renewal of lease(s) for ADP equipment or software. Prior approval of ADP operational services is required from DIT whenever a Delegation of Procurement Authority (DPA) or sharing clearance is required from the General Services Administration (GSA).

(9) The Director, National Capital Service Center, OASAM, or an officer acting in that capacity, is delegated authority and responsibility for acquisition of all property and services on behalf of DOL activities except for those contracting and grant responsibilities designated above. This includes (except for the Mine Safety and Health Administration (MSHA)) acquisition authority for the purchase, lease, and renewal of lease(s) of all ADP equipment, software and all ADP services where Agencies have obtained prior approval from the Directorate of Information Resources Management (DIRM), OASAM, as appropriate.

(e) *Compliance responsibilities.* Each official designated in paragraph (b) is responsible for:

(1) Complying with the policies, procedures and reporting requirements established by the ASAM.

(2) Complying with the policies, procedures and other requirements prescribed by OMB, GSA, and other central agencies, and such implementing instructions as the Department may issue. This specifically includes competition for services and products within the small purchases limitation and restrictions on the use of consultant contracts, audiovisual productions, etc.

(3) Within the limitations specified in this subpart, obtaining all property and services required to fulfill the statutory and regulatory responsibilities of the Agency or Office.

(f) *Policy responsibilities.* The following officials have acquisition policy responsibilities within the DOL:

(1) The Director, Directorate of Procurement and Grant Management, OASAM, or an officer acting in that capacity, is responsible for:

(i) Developing and publishing guidelines, policies, and regulations for DOL acquisition and grant operations.

(ii) Reviewing and evaluating administrative procedures for DOL acquisition and grant operations.

(iii) Providing technical advice and assistance to those DOL officials and officers with acquisition and grant responsibilities. This includes interpreting the Federal Acquisition Regulations and the Department of Labor Acquisition Regulations and obtaining legal advice and assistance from the Solicitor of Labor as required.

(iv) Providing continuous coordination with appropriate DOL and Federal Agencies to ensure compliance with procurement and grant regulations.

(v) Providing technical advice and support to the ASAM in complying with the reporting requirements outlined in paragraph (a)(3).

(2) The Director, Directorate of Information Resources Management (DIRM), OASAM, or an officer acting in that capacity, is responsible for:

(i) Reviewing and providing prior approval for the purchase, lease or renewal of lease(s) of ADP equipment, software and services costing $100,000 or more (the purchase price is to be used to determine inclusion in this paragraph regardless of whether the item is to be purchased or leased) and for all ADP services. Requirements shall not be fragmented in order to circumvent this $100,000 threshold. Reviews involving lower amounts will be made when costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201–23.104.

(ii) Providing oversight, including periodic system reviews, to promote efficient and effective management of information technology resources.

(iii) Reviewing ADP procurement requests for compliance with procurement policies, standards, and regulations.

(iv) Representing DOL and agencies in DOL in liaison with GSA and OMB on ADP matters.

(v) Developing and publishing policies and guidelines for managing information technology resources.

(3) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for:

(i) Assuring participation of the Department in the Federal Small and Disadvantaged Business Program as specified in section 8(a) (small disadvantaged business set-asides) and section 15 (procurement in labor surplus areas) of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Orders 11625 (Minority Business Enterprises) and 12138 (Women-Owned Business Enterprises).

(ii) Assuring participation and input of each Program Agency in establishing DOL goals for increased opportunities for small and disadvantaged business concerns to participate in the Department's procurement and grant activities.

(iii) Providing technical advice and assistance to Program Agencies in establishing Agency goals for utilizing small and disadvantaged businesses.

(iv) Developing systematic procedures, guidelines and regulations for assuring the effective implementation of the provisions of the Small Business Act, as amended, and Executive Orders 11625 and 12138.

(v) Maintaining liaison with the Small Business Administration (SBA) on matters regarding sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637(a) and 644), and Executive Order 12138, and the Department of Commerce on matters relating to Executive Order 11625.

(4) The Director, Office of Information and Public Affairs (OIPA), is responsible for:

(i) Reviewing all purchase orders, requisitions and contracts for audiovisual productions including those which contain an audiovisual component along with other activities before the request is processed and approved by OASAM or another Agency to assure compliance with DOL and OMB requirements. All types of audiovisual productions are covered, including projects for training, education, internal communications, and/or public information purchases. Training and education products will not be reviewed for content but rather for the professional quality, effectiveness and cost of the communications material being produced. (See Guidelines for Management of Departmental Audiovisual Activities, issued pursuant to OMB Circular A–114 and Secretary's Order 5–79.)

(ii) Reviewing all purchase orders, requisitions, and contracts for the rental or purchase of major audiovisual equipment to be used in production work before the request is processed and approved by OASAM or another DOL Agency to assure compliance with DOL and OMB requirements. Production equipment includes motion picture and videotape cameras, editing equipment and duplication equipment for videotape and film. Review is not necessary for such equipment as still cameras, projectors and tape players, cassette tape players, *etc.*

(5) The Procurement Review Board is responsible for:

(i) Reviewing all requests to award contracts, grants, agreements, or modifications thereto (as described in this paragraph (f)(5)) and recommending approval or disapproval to the ASAM:

(A) Requests for noncompetitive procurements, discretionary grants and

agreements exceeding the small purchases limitation;

(B) Noncompetitive consulting and related services requests, including purchase orders, and personnel appointments of consultants and experts;

(C) Competitive procurements for consulting and related services costing $50,000 or more and modifications thereto as described in paragraph (g) of this section;

(D) Major procurements and those with high waste vulnerability; and

(E) Requests for noncompetitive research, evaluation and demonstration projects after prior review by the Assistant Secretary for Policy.

(ii) Assuring compliance with the scope of the Board's authority, with OMB and DOL guidelines for use of consulting and related services and other special acquisitions.

(iii) Approval by the ASAM of requests identified in this paragraph (f)(5) do not constitute award of a contract. The contracting officer has final approval authority.

(g) *Exceptions to delegations of authority.* The assignment of procurement responsibilities described in paragraph (b) are subject to the exclusions listed below:

(1) *Procurement of consulting and related services.* (i) The ASAM retains authority and responsibility for approval of requests for consulting and related services for individuals and organizations under the following circumstances:

(A) When acquisitions by either contract or purchase order are to be awarded without competition, regardless of amount, or for those competitive actions costing $50,000 or more; and

(B) When modifications involving changes in dollar amounts, deliverables under contracts or (under rare circumstances) extensions to existing consulting and related services contracts are required.

(ii) The heads of the contracting activities retain approval authority for the acquisition of consulting and related services costing less than $50,000 which are obtained through competitive procedures.

(2) *Automated data processing (ADP).* The following requirements and limitations exist for the purchase or lease of ADP equipment, software and services:

(i) Authority to issue purchase orders and contracts is limited only to those officials in paragraph (b) with procurement responsibility explicitly including this authority.

(ii) Acquisition of ADP equipment, software and services costing $100,000 or more requires prior approval of DIRM, OASAM.

(iii) Acquisition of ADP equipment, software and services costing less than $100,000 do not require prior approval of DIRM, OASAM, unless costs involved exceed GSA blanket delegation thresholds granted under FIRMR 201–23.104. However, agencies are responsible for complying with FIRMR documentation requirements.

(3) *Records equipment.* The purchase of records equipment; defined as file cabinets, shelf files, visible files, mechanized files, files guides, folders, jackets, wallets, and similar items used in the creation and maintenance of records and in mail handling requires special authority. Federal Property Management Regulation 101–11.306 as implemented by the Department of Labor Manual Series (DLMS–1) requires that: Form DL 1–194 be completed by the Agency Records Officer and forwarded to the Departmental Records Officer, DIRM, OASAM, for approval prior to acquisition. Regional Administrators—OASAM are delegated this approval authority for their respective regions. In keeping with GSA Bulletins FPMR B–120 and B–122 which discourage the use of legal-size files, no new legal size records equipment is to be purchased.

(4) The OSDBU will periodically monitor DOL Agency acquisition and grant functions which relate to the preferential programs to determine their effectiveness and adherence to Federal and DOL requirements.

(5) The Assistant Inspector General for Audit will periodically audit Agency acquisition and grant functions to determine compliance with governing regulations, policies and procedures.

(h) *Rescission of authority.* The ASAM acting through the Director, Directorate of Procurement and Grant Management, reserves the right to rescind the acquisition and grant authority

delegated herein if it is determined that such action is in the best interest of the Government.

[50 FR 8914, Mar. 5, 1985, as amended at 51 FR 40372, Nov. 6, 1986]

2901.603–70 Modification of appointment.

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

2901.603–71 Ratification of unauthorized contract awards.

(a) The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act of 1949, other Federal laws, the FAR, the DOLAR, and good acquisition practice; *e.g.*, certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met, such as certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, price/cost analysis, administrative approvals, negotiations of appropriate contract clauses, *etc*.

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase ''otherwise proper'' means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements; *e.g.*, there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the Organizational Conflict of Interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met. Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid contractual coverage. The Head of the Contracting Activity (HCA) shall then be notified of the circumstances. If the HCA agrees that the work appears to be without valid authorization, the Director, Directorate of Procurement and Grant Management, shall be notified by the HCA in accordance with the procedures outlined in paragraph (c) of this section.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition office was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Director, Directorate of Procurement and Grant Management, may waive the requirement that the responsible employee initiate and document the request; *Provided* the Head of the Contracting Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for noncompetitive acquisition, and the information required by paragraph (c)(1) of this section, must be forwarded to the HCA for concurrence, together with recommended corrective actions to preclude recurrence.

(3) If the HCA concurs with the request for ratification, the request and concurrence shall be forwarded to the Director, Directorate of Procurement and Grant Management, for review by the Procurement Review Board (PRB).

The PRB will review the request, the Justification for Non-Competitive Acquisition, any comments or information submitted by the contracting officer which should be considered in evaluation of the request, and the information submitted in accordance with paragraph (c)(2) of this section. Based upon this review and advice from the Office of the Solicitor, the PRB will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring HCA without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the PRB may ratify the action, with the concurrence of the Assistant Secretary for Administration and Management, return the file to the contracting officer for action, and monitor the implementation of the corrective action plan. The contracting officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(iii) A detailed record of the review shall be maintained for audit purposes.

2901.603–72 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Personnel responsible for making decisions to buy should maintain a close and continuous relationship with their acquisition activity to ensure that acquisition personnel are made aware of contemplated acquisition actions. This will be mutually beneficial in terms of better planning for acquisition action and more timely, efficient and economical acquisition.

(c) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed, and met;

(4) Performance or delivery is timely;

(5) Files are documented to substantiate the judgments, decisions, and actions taken.

2901.603–73 Contracting officer's representatives.

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical nature not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to the extent to which the representative may take action for the contracting officer, but will not contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to a contracting office and performing primary duties in a position within a contracting office, and under the supervision of a contracting officer, does not require written designation as a representative of the contracting officer nor designation in a contractual document to perform assigned duties. Such a person is considered to be an employee of the contracting officer, acting in the latter's behalf and, as such, has the authority and responsibility to perform, under the terms and conditions of employment, and to act as assigned by the contracting officer. The contracting officer, however, shall not authorize such as employee, acting as a representative for the contracting officer, to sign any contractual documents or letter in those instances where the signature of a contracting officer is required.

2901.603–74 Legal review and assistance.

Proposed acquisitions may be subject to legal review by the Office of the Solicitor of Labor. Internal DOL procedures are contained in the Department of Labor Manual Series (DLMS–2, Chapter 900, Section 910). Copies of the DLMS Chapter may be obtained upon written request from the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[51 FR 40373, Nov. 6, 1986]

PART 2902—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2902.1—Definitions

2902.101 Definitions.

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning, or (b) a different definition is prescribed for a particular part or portion of a part:

Contracting activity means an agency or office within the Department with delegated procurement authority to manage contracting functions associated with its mission. Within the Office of the Assistant Secretary for Administration and Management, the National Capital Service Center is the contracting activity.

Head of procuring activity means the Assistant Secretary for Administration and Management; the Assistant Secretary for Employment and Training; the Assistant Secretary for Mine Safety and Health, and the Director, National Capital Service Center.

Head of the agency (also called *agency head*) means the Assistant Secretary for Administration and Management.

Head of the contracting activity (HCA) means the Assistant Secretary for Administration and Management; the Director, National Capital Service Center, and the head of each DOL Agency and Office listed in 2901.603–1(b) who has overall responsibility for managing the contracting activity.

Procurement Executive means the Director, Directorate of Procurement and Grant Management, and is synonymous with the term *Senior Procurement Executive* defined at FAR subpart 2.1. Responsibilities of the Procurement Executive include appointing the DOL advocate for competition.

Procuring activity means the Office of the Assistant Secretary for Administration and Management; the Employment and Training Administration; the Mine Safety and Health Administration; and the National Capital Service Center.

[50 FR 8921, Mar. 5, 1985, as amended at 51 FR 40373, Nov. 6, 1986; 53 FR 3839, Feb. 9, 1988]

PART 2903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2903.1—Safeguards

Sec.
2903.101 Standards of conduct.
2903.101–3 Agency regulations.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the gratuities clause.
2903.204 Treatment of violations.

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.
2903.302–2 Reporting requirements.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Covenant against Contingent Fees.

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.
2903.603 Responsibilities of the contracting officer.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8921, Mar. 5, 1985, unless otherwise noted.

Subpart 2903.1—Safeguards

2903.101 Standards of conduct.

2903.101–3 Agency regulations.

All DOL personnel engaged in acquisition related activities shall conduct such activities in a manner above reproach in every respect. See part 0 of title 29, CFR. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. See 2903.6 for requirements concerning contracting with current or former DOL employees.

Subpart 2903.2—Contractor Gratuities to Government Personnel

2903.203 Reporting suspected violations of the gratuities clause.

(a) *Action official.* The Director, Directorate of Procurement and Grant Management, is the DOL official authorized to take action pursuant to FAR 3.204(c) against a contractor if it is determined that a violation of the clause at FAR 52.203–3, Gratuities, has occurred. This authority may not be redelegated.

(b) *Referral.* Whenever a suspected violation of the clause at FAR 52.203–3, Gratuities, becomes known to a DOL employee, the matter shall be reported to the cognizant contracting officer. The report shall be in writing and shall clearly state the circumstances surrounding the incident or incidences where it is alleged that the contractor offered or gave a gratuity to a DOL employee and intended by the gratuity to obtain a contract or favorable treatment under a contract. The date(s), location(s), and name(s) of all parties involved in the incident shall be included in the report. The report shall also include a recommended course of action in accordance with FAR 3.204(c) and shall be submitted through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management for disposition.

2903.204 Treatment of violations.

(a) *Notice of contractor.* After review of the report and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management shall determine further action to be taken. If requested, the contractor shall be provided with a formal notice which summarizes the events involving the suspected violations and affords the contractor the opportunity to take the action(s) listed under FAR 3.204(b). The notice shall contain a reasonable time limit for reply and shall be sent by certified mail, return receipt requested.

(b) *Action.* Based on the contractor's response to the notice; the results of any further discussions with the contractor, the counsel, or witnesses; the review of additional documentary evidence; and other pertinent information, the Director, Directorate of Procurement and Grant Management, shall make a final and binding decision on the action to be taken in accordance with FAR 3.204(c) and shall provide the contractor with a formal notice of such action.

[50 FR 8921, Mar. 5, 1985, as amended at 51 FR 40373, Nov. 6, 1986]

Subpart 2903.3—Reports of Identical Bids and Suspected Antitrust Violations

2903.302 Reporting identical bids.

2903.302–2 Reporting requirements.

Potential anti-competitive practices, such as described in FAR 3.301, and antitrust law violations as described in FAR 3.303, evidenced in bids or proposals shall be reported to the Office of the Solicitor through the Head of the Contracting Activity with a copy to the Director, Directorate of Procurement and Grant Management. The Office of the Solicitor will provide reports to the Attorney General as appropriate.

Subpart 2903.4—Contingent Fees

2903.409 Misrepresentation or violation of the Convenant against Contingent Fees.

(a) Suspected misrepresentation or violations of the Convenant Against Contingent Fees shall be documented and reported promptly to the contracting officer for review and action under FAR 3.409.

(b) Suspected fraudulent or criminal violations shall be documented in a report and submitted by the contracting officer to the Office of the Solicitor prior to initiation of any actions outlined in FAR 3.409(b). A copy of the report shall be submitted to the Director, Directorate of Procurement and Grant Management.

Subpart 2903.5—Other Improper Business Practices

2903.502 Subcontractor kickbacks.

(a) Reports on suspected violations of the Antikickback Act as required by FAR 3.502(b) shall be prepared by the contracting officer and submitted by the head of the contracting activity to the Office of the Solicitor for further action. A copy of the report shall be submitted to the Director, Directorate of Procurement and Grant Management.

(b) The head of the contracting activity may initiate debarment or suspension action in accordance with FAR 9.406–2 or 9.407–2 and 2909.4 of this chapter.

Subpart 2903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2903.602 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to except a contract from the policy in FAR 3.601.

(b) Negotiated contracts or grants or amendments to existing contracts or grants which constitute new acquisition (including those for the rental of real or personal property) may be entered into with former employees of DOL or with firms in which former employees are known to have a substantial interest, within a period of 1 year subsequent to the termination of the individual's employment by DOL, only with the prior written approval of the Assistant Secretary for Administration and Management.

2903.603 Responsibilities of the contracting officer.

Approval of a decision to grant an exception as provided in 2903.602 shall be documented by a written determination and findings prepared by the contracting officer for signature by the Assistant Secretary for Administration and Management. The determination and findings shall document compliance with FAR 3.603 and 2909.5; specify the compelling reason(s) for award; and be placed in the contract file.

PART 2904—ADMINISTRATIVE MATTERS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8922, Mar. 5, 1985, unless otherwise noted.

Subpart 2904.6—Contract Reporting

2904.601 Federal Procurement Data System.

(a) DOL's data collection point is the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) The SF 279, Individual Contract Action Report (over $10,000), and SF 281, Summary of Contract Actions of $10,000 or less, are due monthly on the tenth day of the month.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2905—PUBLICIZING CONTRACT ACTIONS

Subpart 2905.2—Synopsis of Proposed Contract Actions

Sec.
2905.202 Exceptions.

Subpart 2905.4—Release of Information

2905.403 Requests from Members of Congress.
2905.404 Release of long-range acquisition estimates.
2905.404–1 Release procedures.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8922, Mar. 5, 1985, unless otherwise noted.

Subpart 2905.2—Synopsis of Proposed Contract Actions

2905.202 Exceptions.

The Procurement Executive is authorized to make the determination prescribed in FAR 5.202(b). A written determination documenting the reasons why advance notice is not appropriate or reasonable shall be submitted by the HCA to the Director, Directorate of Procurement and Grant Management, for appropriate action including communication with the officials listed in FAR 5.202(b).

[51 FR 40374, Nov. 6, 1986]

Subpart 2905.4—Release of Information

2905.403 Requests from Members of Congress.

In addition to having access to the information available to the general public, Members of Congress shall, upon their request, be given full and detailed information regarding any particular DOL procurement. The information provided shall be fully responsive to the member's request unless such a response would disclose classified matter, information not to be released pursuant to law, business confidential information or information which would be prejudicial to the competitive process. The contracting officer shall promptly consult with the Office of the Solicitor and the Office of Legislative and Intergovernmental Affairs to determine whether circumstances exist which will allow the release of additional information. In such instances, the Congressional requestor shall be furnished an interim reply providing the information which is readily releasable. The interim reply shall describe the problem which precludes release of any requested materials and describe generally what steps, if any, are being taken to make such information available.

2905.404 Release of long-range acquisition estimates.

2905.404–1 Release procedures.

(a) Heads of contracting activities are authorized to release long-range acquistion estimates under the conditions in FAR 5.404–1.

(b) Offices contemplating the release of long-range acquisition planning estimates shall coordinate with the Office of Information and Public Affairs in advance of the release of such planning estimates.

Subpart 2905.5—Paid Advertisements

2905.502 Authority.

When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

PART 2906—COMPETITION REQUIREMENTS

Subpart 2906.2—Full and Open Competition After Exclusion of Sources

Sec.
2906.202 Establishing or maintaining alternative sources.

Subpart 2906.3—Other Than Full and Open Competition

2906.303 Justifications.
2906.303–1 Requirements.

Subpart 2906.5—Competition Advocates

2906.501 Requirement.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 51 FR 40374, Nov. 6, 1986, unless otherwise noted.

Subpart 2906.2—Full and Open Competition After Exclusion of Sources

2906.202 Establishing or maintaining alternative sources.

The Procurement Executive is authorized to make the determination prescribed in FAR 6.202(b). A written determination shall be submitted by the HCA to the Director, Directorate of Procurement and Grant Management.

Subpart 2906.3—Other Than Full and Open Competition

2906.303 Justifications.

2906.303–1 Requirements.

(a) As prescribed in the Department of Labor Manual Series (DLMS) 2, Chapter 830, any proposed noncompetitive aquisitions in excess of the small purchases limitation must be fully justified, submitted to the DOL Procurement Review Board and approved by the Assistant Secretary for Administration and Management and, in the case of research contracts, by the Assistant Secretary for Policy.

(b) The contracting officer is responsible for assuring that proposed acquisitions below the dollar level specified in paragraph (a) of this section are in compliance with FAR and DOLAR requirements regarding competition.

Subpart 2906.5—Competition Advocates

2906.501 Requirement.

(a) The Competition Advocate for the Department of Labor is the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, OASAM.

(b) The head of the agency has delegated the authority to the Procurement Executive to appoint the Agency and Procuring Activity Competition Advocates. The Procurement Executive has delegated authority to the Head of the Procuring Activity to appoint Procuring Activity Competition Advocates.

PART 2907—ACQUISITION PLANNING

Subpart 2907.1—Acquisition Plans

Sec.
2907.102 Policy.

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2907.1—Acquisition Plans

2907.102 Policy.

DOL Agencies and Offices shall develop acquisition plans for major system acquisitions and major projects in accordance with FAR subpart 7.1 when the potential benefit justifies their development. The Directorate of Procurement and Grant Management and the Procurement Review Board will review each DOL Agency/Office Annual Advance Procurement Plan to ensure compliance with this subpart.

[50 FR 8922, Mar. 5, 1985]

Subpart 2907.3—Contractor Versus Government Performance

2907.307 Appeals.

An appeal of a decision to convert to contract or to continue in-house performance may be made by an affected party. Appeals shall be made in writing, be based only on specific alleged material deviation (or deviations), from OMB Circular A–76, and be supported by appropriate documentation. Appeals must be delivered within 15 working days of the announced decision, through the contracting officer

and the Director, Directorate of Procurement and Grant Management, to the Under Secretary.

[50 FR 8922, Mar. 5, 1985]

PART 2908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2908.8—Acquisition of Printing and Related Supplies

2908.802 Policy.

(a) The Office of Printing, Directorate of Administrative Services and Safety and Health Programs, has been designated as the DOL liaison with the Joint Committee on Printing (JCP) and the Public Printer, Government Printing Office (GPO), on all matters related to printing.

(b) Except as provided in paragraphs 35–2 through 35–4 of the ''Government Printing and Binding Regulations'' of the Congressional Joint Committee on Printing, inclusion of printing as defined in FAR 8.801 in contracts for supplies and services is prohibited unless specifically approved in writing by the Directorate of Administrative Services and Safety and Health Programs.

[50 FR 8923, Mar. 5, 1985]

PART 2909—CONTRACTOR QUALIFICATIONS

Subpart 2909.1—Responsible Prospective Contractors

Sec.
2909.105 Procedures.
2909.105–1 Obtaining information.

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.400 Scope of subpart.
2909.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.
2909.405 Effect of listing.
2909.405–1 Continuation of current contracts.
2909.406 Debarment.
2909.406–1 General.
2909.406–3 Procedures.
2909.407 Suspension.
2909.407–1 General.
2909.407–3 Procedures.

Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.
2909.507 Procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8923, Mar. 5, 1985, unless otherwise noted.

Subpart 2909.1—Responsible Prospective Contractors

2909.105 Procedures.

2909.105–1 Obtaining information.

(a) In addition to the sources of information listed in FAR 9.105–1(c) to support determinations of responsibility or nonresponsibility, the contracting officer shall use, if available, performance evaluation reports on section 8(a) contractors (section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)) and construction and architect-engineer contractors (see 2936.201 and 2936.604).

(b) Contracting officers may obtain credit reports prior to the issuance of any loan, loan guarantee, contract or grant through the credit bureau service. The National Capital Service Center will award a contract for the credit bureau service for use by all DOL contracting activities until such services become available through an established GSA Federal Supply Schedule.

[50 FR 8923, Mar. 5, 1985, as amended at 51 FR 40374, Nov. 6, 1986]

Subpart 2909.4—Debarment, Suspension, and Ineligibility

2909.400 Scope of subpart.

This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list.

2909.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) The Directorate of Procurement and Grant Management, is responsible for accomplishing the actions required in FAR 9.404(c).

(b) The Directorate of Procurement and Grant Management, upon receipt of monthly issues of the consolidated list from GSA, shall distribute the issues to the heads of contracting activities.

(c) Weekly supplements to monthly lists shall be furnished to the heads of contracting activities by the Directorate of Procurement and Grant Management.

2909.405 Effect of listing.

The Director, Directorate of Procurement and Grant Management, is authorized to make the determinations listed in FAR 9.405(a). Requests for such determinations shall be submitted by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management.

2909.405–1 Continuation of current contracts.

The Director, Directorate of Procurement and Grant Management, is authorized to take the actions listed in FAR 9.405–1.

2909.406 Debarment.

2909.406–1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406–2, using the procedures in 2909.406–3.

(b) Exceptions to debarment made by another Executive Agency shall be made by the Director, Directorate of Procurement and Grant Management, in accordance with the conditions in FAR 9.406–1(c).

2909.406–3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406–2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation which documents the cause for debarment to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Director, Directorate of Procurement and Grant Management, shall initiate proposed debarment by taking the actions listed in FAR 9.406–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.406–3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal factfinding as required by FAR 9.406–3(b)(2)(i). The hearing shall be conducted by the Office of Administrative Law Judges and shall be held at a date and location convenient to the parties concerned. Subject to the provisions of 29 CFR part 18, the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the conditions in FAR 9.406–3(b)(2)(ii).

(d) *Decision and notice.* The Director, Directorate of Procurement and Grant Management, shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406–3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406–4 and 9.406–5. Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the procedures in FAR 9.406–3(e).

2909.407 Suspension.

2909.407–1 General.

(a) The Director, Directorate of Procurement and Grant Management, is the suspending official for DOL and is authorized to suspend a contractor for any of the causes in FAR 9.407–2, using the procedures in 2909.407–3.

(b) The Director, Directorate of Procurement and Grant Management, is authorized to make the statement regarding suspension by another agency suspending official under the conditions in FAR 9.407–1(d).

2909.407–3 Procedures.

(a) *Investigation and referral.* Whenever a cause for suspension, as listed in FAR 9.406–2, becomes known to a DOL employee, the head of the contracting activity affected shall be notified. The head of the contracting activity shall consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation, which documents the cause for suspension, to the Director, Directorate of Procurement and Grant Management.

(b) *Notice of suspension.* Based upon review of the recommendation to suspend and consultation with the Office of the Solicitor and the Office of the Inspector General, as required, the Director, Directorate of Procurement and Grant Management, shall initiate suspension by taking the actions listed in FAR 9.407–3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Factfinding proceedings.* For actions listed under FAR 9.407–3(b)(2), the Director, Directorate of Procurement and Grant Management, shall afford the contractor the opportunity to appear at an informal hearing as required by FAR 9.407–3(b)(2)(i). The hearing shall be conducted under the conditions in 2909.407–3(c).

(d) *Suspension decisions.* The Director, Directorate of Procurement and Grant Management, shall make a final decision on suspension as prescribed in FAR 9.407–3(d). Notice of the decision shall be provided to the contractor and any affiliates involved in accordance with the provisions in FAR 9.407–3(d)(4).

Subpart 2909.5—Organizational Conflicts of Interest

2909.503 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive any general rule or procedure in FAR 9.5 when its application in a particular situation would not be in the Government's interest. Pursuant to FAR 9.503, this authority may not be redelegated.

(b) Requests for waivers shall be made by the head of the contracting activity to the Director, Directorate of Procurement and Grant Management. Each request shall include:

(1) An analysis of the facts involving the potential or actual conflict including benefits and detriments to the Government and prospective contractors;

(2) A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and

(3) Identification of the provision(s) in FAR subpart 9.5 to be waived.

(c) In making determinations under 2909.503(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

2909.507 Procedures.

(a) If a prospective contractor disagrees with the decision of a contracting officer regarding an organizational conflict of interest provision and requests higher level review in accordance with FAR 9.507(c)(4) the matter shall be referred to the Director, Directorate of Procurement and Grant Management for review and final decision.

(b) Referrals shall be made by the head of the contracting agency concerned and include the contracting officer's decision and the position of the prospective contractor.

(c) In making determinations under 2909.507(a), the Director, Directorate of Procurement and Grant Management, shall request the opinion of the Office of the Solicitor.

PART 2910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
2910.004 Selecting specifications or descriptions for use.
2910.004–70 Brand name products or equal.
2910.007 Deviations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8924, Mar. 5, 1985, unless otherwise noted.

2910.004 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.1004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless it is determined in writing by the Office initiating the purchase request that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet these requirements. This determination shall be in writing and shall accompany the purchase requisition.

(b) A ''brand name or equal'' purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the policies and procedures in 2910.004–70.

2910.004–70 Brand name products or equal.

(a) *Limitations on use.* The identification of a requirement in a purchase description by use of one or more brand name products followed by the words ''or equal'' shall be used only under the conditions listed in FAR 10.004(b)(3). A ''brand name product'' means a current commercial product of a manufacturer described by its brand name, make, model number, catalog designation, or other description by which it is regularly offered for sale to the public in the commercial market place.

(b) *Invitation requirements.* (1) ''Brand name or equal'' purchase descriptions in invitations shall identify salient characteristics of the product (see 2910.004–70(b)(2)) and contain the following information to describe the specific item:

(i) Identification of the item by generic descriptions;

(ii) Make, model number, catalog designation (or other description), and identification of commercial catalog where it is listed; and

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(2) In accordance with the policy in FAR 10.002, whenever a ''brand name or equal'' purchase description is used, offerors shall be given the opportunity to offer products equal to the brand name if those products (including modifications thereto) satisfy the minimum needs of the Government. Therefore, all salient characteristics of the ''brand name or equal'' product which are determined by the office initiating the purchase request to be essential to the Government's minimum needs shall be identified separately under the heading of ''Salient Characteristics'' and included in the purchase description contained in the solicitation so the offeror understands the information to be submitted with its bid when offering an ''equal'' product for evaluation. In addition, the following certification shall be included at the end of each ''brand name or equal'' description in a solicitation for an offeror to identify its ''equal'' product:

Offerors proposing to furnish an ''equal'' product, in accordance with the ''Brand Name or Equal'' provision of this solicitation, shall insert the following description for the product.

Bidding on: _____

Manufacturer's Name: _____

Address: _____

Product Name (if any): _____

Product make, model, or catalog description: _____

_____

Offerors shall also be responsible for submitting all additional information on the above product necessary for the Government to determine whether the product offered meets the salient characteristics of the ''brand name'' as listed in the solicitation.

2910.007 Deviations.

(a) Heads of contracting activities are authorized to approve deviations and exceptions to specifications or standards listed in the Index of Federal Specifications and Standards when the exceptions listed under FAR 10.006 do not apply. The Director, Directorate of Procurement and Grant Management, shall be notified formally and provided a copy of each deviation or exception approved.

(b) Heads of contracting activities are responsible for accomplishing the actions required under FAR 10.007.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2913—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2913.1—General

Sec.
2913.106 Competition and price reasonableness.
2913.107 Solicitation and evaluation of quotations.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.
2913.503–70 Duplicate purchase orders.
2913.505 Purchase order and related forms.
2913.505–2 Agency order forms in lieu of optional forms 347 and 348.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8925, Mar. 5, 1985, unless otherwise noted.

Subpart 2913.1—General

2913.106 Competition and price reasonableness.

When other than the lowest responsive quotation from a responsible supplier is used as the basis for the purchase, the Contracting Officer shall include in the purchase file documentation of the reason(s) for rejecting any lower quotation and the name of the individual responsible for making the determination to reject such quotation.

2913.107 Solicitation and evaluation of quotations.

Standard Form 18, Request for Quotations, shall be used as prescribed in FAR 13.107(a) unless an agency equivalent form has been authorized for use by the Director, Directorate of Procurement and Grant Management.

Subpart 2913.3—Fast Payment Procedure

2913.301 General.

The fast payment procedure delineated in FAR subpart 13.3 shall not be utilized by DOL.

Subpart 2913.4—Imprest Fund

2913.403 Agency responsibilities.

The DOL ''Imprest Fund Handbook'' incorporated in the Department of Labor Manual Series (DLMS 6, Chapter 1900, Handbook DLMS 6–5) contains internal DOL procedures for establishment, maintenance and use of imprest funds. Copies of the handbook may be obtained upon written request from the Directorate of Procurement and Grant Management, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[50 FR 8925, Mar. 5, 1985, as amended at 51 FR 40374, Nov. 6, 1986]

Subpart 2913.5—Purchase Orders

2913.503 Obtaining contractor acceptance and modifying purchase orders.

2913.503–70 Duplicate purchase orders.

If the vendor reports non-receipt, loss or other inability to locate an original purchase order and requests another copy, the purchasing officer may issue to the vendor a duplicate copy as the vendor's basis of performance. This second issue should be conspicuously marked ''Duplicate Copy.'' To avoid the possibility of a duplicate shipment, a letter of transmittal or a notation on the purchase order should read as follows:

This is a duplicate copy of the lost original purchase order, furnished in accordance with

your request of ———— (Date). The Government will not be responsible for duplicate shipment.

[50 FR 8925, Mar. 5, 1985, as amended at 51 FR 40374, Nov. 6, 1986]

2913.505 Purchase order and related forms.

2913.505–2 Agency order forms in lieu of optional forms 347 and 348.

Department of Labor Form 1–90 (DL Form 1–90), entitled ''Purchase Order'' may be used by DOL in lieu of Optional Forms 347 and 348 prescribed in FAR 13.505.

PART 2914—SEALED BIDDING

Subpart 2914.2—Solicitation of Bids

Sec.
2914.203 Methods of soliciting bids.
2914.203–2 Dissemination of information concerning invitation for bids.
2914.205 Solicitation mailing lists.
2914.205–1 Establishment of lists.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.404 Rejection of bids.
2914.404–1 Cancellation of invitations after opening.
2914.406 Mistakes in bids.
2914.406–3 Other mistakes disclosed before award.
2914.406–4 Disclosure of mistakes after award.
2914.407 Award.
2914.407–8 Protests against award.
2914.407–70 Award when only one bid is received.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8925, Mar. 5, 1985, unless otherwise noted.

Subpart 2914.2—Solicitation of Bids

2914.203 Methods of soliciting bids.

2914.203–2 Dissemination of information concerning invitation for bids.

Procedures for obtaining approval for paid advertisements in newspapers are contained in 2905.502.

2914.205 Solicitation mailing lists.

2914.205–1 Establishment of lists.

In accordance with FAR 14.205–1(b), prospective bidders which submit solicitation mailing list applications shall be notified by the Contracting Activity when added to a mailing list unless the bidder is expected to be issued a solicitation within thirty days after Government receipt of the application.

Subpart 2914.4—Opening of Bids and Award of Contract

2914.404 Rejection of bids.

2914.404–1 Cancellation of invitations after opening.

The head of the contracting activity (HCA) is authorized to make the written determination required by FAR 14.404–1(c).

[51 FR 40374, Nov. 6, 1986]

2914.406 Mistakes in bids.

2914.406–3 Other mistakes disclosed before award.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to make the administrative determinations under FAR 14.406–3. This authority may not be redelegated except as set forth in paragraph (b) of 2914.406–3.

(b) If (1) a bidder requests permission to withdraw a bid rather than correct it, and (2) the evidence is determined convincing as to the mistake or (3) the evidence reasonably supports the existence of a mistake but is not clear and convincing, the head of the contracting office is authorized to make a written determination permitting the bidder to withdraw the bid after review, in accordance with established procedures, and concurrence by the appropriate Office of the Solicitor. Copies of all determinations made pursuant to this authority shall be promptly transmitted to the Director, Directorate of Procurement and Grant Management. If evidence of the intended bid is clear and convincing, even though the bidder has not requested permission to correct the bid, the case shall be processed in accordance with paragraph (c) of 2914.406–3.

(c) Suspected or alleged mistakes in bids shall be processed in accordance with the requirements of FAR 14.406–3(g). The contracting officer shall submit a report together with the supporting data described in FAR 14.406–3(g)(3) through the head of the contracting activity to the Director, Directorate of Procurement and Grant Management.

(d) The Director, Directorate of Procurement and Grant Management, is responsible for maintaining records of administrative determinations as required in FAR 14.406–3(h).

2914.406–4 Disclosure of mistakes after award.

(a) The head of the contracting activity is authorized to make the administrative determinations in FAR 14.406–4 after concurrence is received from the Office of the Solicitor as required by FAR 14.406–4(d). This authority may not be redelegated.

(b) The contracting officer shall process a mistake and prepare a case file in accordance with the requirements of FAR 14.604–4(e). The file shall be submitted to the head of the contracting activity for determination.

2914.407 Award.

2914.407–8 Protests against award.

See DOLAR subpart 2933.1, ''Protests''.

[51 FR 40374, Nov. 6, 1986]

2914.407–70 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the contracting officer makes a written determination that (a) the specifications used in the invitation were not unduly restrictive, (b) adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted, (c) the price is reasonable, and (d) the bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the contract file.

PART 2915—CONTRACTING BY NEGOTIATION

Subpart 2915.4—Solicitation and Receipt of Proposals and Quotations

2915.404 Presolicitation notices and conferences.
2915.405 Solicitations for information or planning purposes.
2915.405–1 General.
2915.413 Disclosure and use of information before award.
2915.413–1 Alternate I.

Subpart 2915.5—Unsolicited Proposals

2915.505 Content of unsolicited proposals.
2915.505–1 Unsolicited research proposals.
2915.506 Agency procedures.

Subpart 2915.6—Source Selection

2915.607 Disclosure of mistakes before award.
2915.608 Proposal evaluation.
2915.612 Formal source selection.

Subpart 2915.8—Price Negotiation

2915.803 General.
2915.804 Cost or pricing data.
2915.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
2915.805 Proposal analysis.
2915.805–5 Field pricing support.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8926, Mar. 5, 1985, unless otherwise noted.

Subpart 2915.4—Solicitation and Receipt of Proposals and Quotations

2915.404 Presolicitation notices and conferences.

A presolicitation conference (see FAR 15.404) shall not be used unless approved by the Head of the Contracting Activity or designee in accordance with Agency or Office procedures.

2915.405 Solicitations for information or planning purposes.

2915.405–1 General.

The written determination justifying use of a solicitation for information or planning purposes under FAR 15.405–1 shall be approved by the Head of the Contracting Activity before issuance of the solicitation.

2915.413 Disclosure and use of information before award.

2915.413–1 Alternate I.

The Department of Labor shall employ the procedures in FAR Alternate I regarding disclosure and use of information.

Subpart 2915.5—Unsolicited Proposals

2915.505 Content of unsolicited proposals.

2915.505–1 Unsolicited research proposals.

In addition to the contents required by FAR 15.505, unsolicited proposals for research should contain a commitment to provide cost-sharing.

2915.506 Agency procedures.

(a) The contact points for submission of unsolicited proposals are those officials (Heads of Contracting Activities) with program responsibility listed in subpart 2901.6.

(b) Heads of Contracting Activities shall assure that unsolicited proposals are controlled, evaluated, safeguarded and disposed of in accordance with FAR subpart 15.5.

Subpart 2915.6—Source Selection

2915.607 Disclosure of mistakes before award.

The Head of the Contracting Activity is authorized to make the determination permitting proposal correction in accordance with the conditions in FAR 15.607(c)(3) and consultation with the Office of the Solicitor.

2915.608 Proposal evaluation.

The head of contracting activity (HCA) is authorized to make the determination required by FAR 15.608(b).

[51 FR 40374, Nov. 6, 1986]

2915.612 Formal source selection.

(a) The Head of the Contracting Activity shall determine when a formal source selection process shall be used and shall establish procedures for implementing the requirements in FAR 15.612.

(b) The procedures established under paragraph (a) of this section shall be forwarded for the review and approval of the Director, Directorate of Procurement and Grant Management.

Subpart 2915.8—Price Negotiation

2915.803 General.

(a) Where 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 to resolve the matter (see FAR 15.803), the contract action shall be referred to the Head of the Contracting Activity for final resolution.

(b) Resolution under paragraph (a) of this section, shall be documented and signed by the Head of the Contracting Activity, and included in the contract file.

2915.804 Cost or pricing data.

2915.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) The Head of the Contracting Activity is authorized to approve the contracting officer's finding supporting the unreasonableness of the lowest price (see FAR 15.804–3(b)(2)(iii).

(b) The Director, Directorate of Procurement and Grant Management, is authorized to waive the requirement for submission of certified cost or pricing data.

(c) Requests for waiver under paragraph (b) of this section, shall be submitted in writing by the Head of the Contracting Activity and shall contain a statement as to the reasons the waiver is necessary and the efforts made to obtain the data from the contractor or prospective contractor.

2915.805 Proposal analysis.

2915.805–5 Field pricing support.

(a) As prescribed in FAR 15.805–5(c), the contracting officer shall initiate a cost or pricing review by sending a written request to the Director, Directorate of Procurement and Grant Management, OASAM. The contracting officer shall allow at least 30 calendar

days when assigning a deadline for receipt of the cost and price analysis report.

(b) Upon receipt of the cost or pricing review report, the contracting officer and the price analyst (if assigned) shall discuss any questions regarding the contents of the report with the reviewer. If a question cannot be resolved, or agreement cannot be reached on a recommendation in the report, the contracting officer shall prepare a written statement for the contract file which discusses the issue(s) in question and supports a final decision on the matter. An information copy of the statement shall be promptly forwarded to the Director, Directorate of Procurement and Grant Management.

PART 2916—TYPES OF CONTRACTS

Subpart 2916.2—Fixed Price Contracts

Sec.
2916.203 Fixed-price contracts with economic price adjustment.
2916.203–4 Contract clauses.

Subpart 2916.3—Cost-Reimbursement Contracts

2916.306 Cost-plus-fixed-fee contracts.

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts.
2916.603–2 Application.

Subpart 2916.7—Agreements

2916.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8929, Mar. 5, 1985, unless otherwise noted.

Subpart 2916.2—Fixed Price Contracts

2916.203 Fixed-price contracts with economic price adjustment.

2916.203–4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203–4(d) after approval by the Director, Directorate of Procurement and Grant Management, is obtained.

Subpart 2916.3—Cost-Reimbursement Contracts

2916.306 Cost-plus-fixed-fee contracts.

The Contracting Officer is authorized to approve the determination establishing the basis for application of the statutory price or fee limitation prescribed in FAR 16.306(c)(2).

[51 FR 40374, Nov. 6, 1986]

Subpart 2916.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2916.603 Letter contracts.

2916.603–2 Application.

The Head of the Contracting Activity is authorized to extend the period for definitization of a letter contract required by FAR 16.603–2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

Subpart 2916.7—Agreements

2916.702 Basic agreements.

Copies of basic agreements negotiated with contractors in accordance with FAR 16.702 shall be furnished by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, promptly after execution by the Government.

PART 2917—SPECIAL CONTRACTING METHODS

Subpart 2917.2—Options

Sec.
2917.203 Solicitations.
2917.206 Evaluation.

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8929, Mar. 5, 1985, unless otherwise noted.

Subpart 2917.2—Options

2917.203 Solicitations.

Option quantities in excess of the 50 percent limit prescribed in FAR 17.203(g)(2) may, in unusual circumstances, be approved by the Head of the Contracting Activity. The documentation required by FAR 17.205(a) shall include a written justification to fully support the need for such action.

2917.206 Evaluation.

The Head of the Contracting Activity shall make the written determination required by FAR 17.206(a). This determination is required before use of the solicitation provision at FAR 52.217–5, Evaluation of Options, is authorized. See FAR 17.208(c).

Subpart 2917.4—Leader Company Contracting

2917.402 Limitations.

Use of leader company contracting for a product, subject to the limitations in FAR 17.402, shall require the advance authorization of the Director, Directorate of Procurement and Grant Management. Authorization requests shall document the circumstances requiring such action and shall be submitted by the Head of the Contracting Activity.

Subpart 2917.5—Interagency Acquisitions Under the Economy Act

2917.502 General.

The head of the contracting activity is authorized to make the determination prescribed in FAR 17.502 in accordance with the requirements contained in FAR 17.503.

[51 FR 40374, Nov. 6, 1986]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2919.2—Policies

Sec.
2919.201 General policy.
2919.202 Specific policies.
2919.202–2 Locating small business sources.
2919.202–5 Data collection and reporting requirements.
2919.202–70 Annual plans and program goals.

Subpart 2919.5—Set-Asides for Small Business

2919.501 General.
2919.503 Setting aside a class of acquisitions.
2919.503–70 Class set-aside for construction acquisitions.
2919.505 Rejection of set-aside recommendations.
2919.506 Withdrawal or modification of set-asides.

Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

2919.602 Procedures.
2919.602–1 Referrals.

Subpart 2919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2919.705–3 Solicitations.
2919.705–4 Reviewing the subcontracting plan.
2919.705–5 Awards involving subcontracting plans.
2919.705–6 Postaward responsibilities of the contracting officer.
2919.708 Solicitation provisions and contract clauses.

Subpart 2919.8—Contracting With the Small Business Administration

2919.802 Selecting firms for DOL acquisitions.
2919.803 Selecting acquisitions for the 8(a) program.
2919.810 Contract administration.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8929, Mar. 5, 1985, unless otherwise noted.

Subpart 2919.2—Policies

2919.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19–201(c) and for:

(1) Developing and monitoring policies, procedures and regulations for effective administration of the Department's small business and small disadvantaged business program;

(2) Coordinating issues with the small and disadvantaged business specialist (SDBS) in each contracting office regarding the Department's small and small disadvantaged business program;

(3) Conducting surveys and reviews of DOL contracting offices related to the small business and small disadvantaged business program, recommending changes and corrective action, as appropriate; and

(4) Representing the Department before other Government agencies on matters primarily affecting small business, small disadvantaged business, women-owned business, historically black colleges and universities (HBCU), and advising the Under Secretary and other officials on matters relating to the program.

(b) The Head of the Contracting Activity, or designee, in addition to the requirements of FAR 19.201(b), shall be responsible for:

(1) Establishing annual goals for the small disadvantaged business programs; and

(2) Appointing, as prescribed in FAR 19.201(d), a small and disadvantaged business specialist (SDBS) for each contract office.

(c) The small and disadvantaged business specialist (SDBS) shall serve as advisor to the Head of the Contracting Activity, and shall be the contracting activity's central point of contact for inquiries and advice pertaining to the small business and small disadvantaged business program. The SDBS shall be responsible for:

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill the Department's acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, women-owned business concerns and HBCU on DOL contracting and subcontracting opportunities and other acquisition matters;

(3) Ensuring that contracting offices are kept abreast of new or revised small business, small disadvantaged business, women-owned business and HBCU regulations, policies, procedures and other related information;

(4) Assisting in the Agency's advance acquisition planning process;

(5) Reviewing all requirements to assure that small business, small disadvantaged business, women-owned business, businesses located in labor surplus areas (LSA) and HBCU will be afforded an equitable opportunity to compete, and as appropriate, initiating recommendations for small business set-asides;

(6) Reviewing proposed requirements for possible breakout of items or services suitable for acquisition from participants of the small and disadvantaged business programs;

(7) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to better qualify for future awards;

(8) Participating in the evaluation of small business and small disadvantaged business subcontracting plans for prime contractors and other evaluation activities, as appropriate;

(9) Maintaining a list of products and services which have been placed as repetitive small business set-asides;

(10) Developing and maintaining records necessary to demonstrate maximum support for DOL's preferential programs, ensuring compilation of current, accurate, and complete data; and preparing all reports pertaining to program activities;

(11) Participating in the development, implementation, and review of automated source systems to assure that the interest of small business, small disadvantaged business, women-owned business, and HBCU are fully considered;

(12) Participating, as required, in governmental-industry conferences to assist small business, disadvantaged business, women-owned business, and HBCU, including Congressionally-sponsored Federal acquisition conferences, minority business enterprises acquisition seminars, and business opportunity committee meetings;

(13) Initiating action, in writing, with appropriate personnel to assure the availability of adequate specifications and drawings, when necessary, to obtain small business, small disadvantaged business, women-owned business and HBCU participation in current and future acquisitions.

2919.202 Specific policies.

2919.202–2 Locating small business sources.

(a) It is the policy of the DOL to utilize the services of the SBA Procurement Automatic Source System (PASS) to identify small and small disadvantaged business sources. Obtaining sources from PASS or from local mailing lists does not negate the requirement that the contracting officer advertise the acquisition in accordance with FAR 5.

(b) Historically black colleges and universities shall be considered as sources for fulfilling requirements except for small business set-asides.

2919.202–5 Data collection and reporting requirements.

In addition to the requirements of FAR 19.202–5, DOL Agencies/Offices shall accurately measure the extent of participation by historically black colleges and universities in their acquisitions in terms of the total value of contracts placed with such organizations during each fiscal year, and report data to the OSDBU at the end of the second and fourth quarters of each fiscal year. The OSDBU shall forward the Department's consolidated data to the Department of Education.

2919.202–70 Annual plans and program goals.

(a) Heads of Contracting Activities shall develop annual goals for each category of the small business and small disadvantaged business utilization programs, which shall include projected acquisition awards to small businesses, minority businesses, 8(a) concerns, women-owned businesses, and HBCU.

(1) To the greatest extent possible, the goals shall be based on advance procurement plans, budget justifications, and past performance.

(2) Goals must comply with the criteria established by OSDBU.

(b) Goals are to be submitted to the OSDBU upon request of the Director. OSDBU shall analyze and evaluate proposed goals, consolidate departmental goals and forward such to the Small Business Administration (SBA), the General Services Administration (GSA), and the Minority Business Development Agency (MBDA), Department of Commerce.

(c) OSDBU may be required to negotiate final departmental goals, depending on SBA, GSA, and/or MBDA concurrence or nonconcurrence.

Subpart 2919.5—Set-Asides for Small Business

2919.501 General.

(a) The SDBS shall review individual requirements prior to issuance of solicitations to determine the suitability of the acquisition for award to the SBA under the section 8(a) Program (see FAR 19.803).

(b) When the requirement cannot be awarded under section 8(a) procedures, the SDBS shall review individual requirements to determine the feasibility of small business set-asides in the order of precedence set forth in FAR 19.504. The SDBS recommendation shall be entered on Form DL1–2004, ''Small Business Determination,'' with the reasons for the ''pro'' or ''con'' set-aside recommendation. The form shall be placed in the contract file.

(c) Upon receipt of the SDBS recommendation, the contracting officer shall promptly approve or disapprove the SDBS recommendation, stating in writing the reasons for any disapproval. If the contracting officer disapproves the SDBS recommendation, the proposed acquisition shall be promptly referred to the SBA PCR where available, for review; or where no SBA PCR is available, to the Head of the Contracting Activity. All negative recommendations shall be forwarded concurrently to the OSDBU.

(d) All requirements expected to exceed $10,000 which have not been set-aside for small business shall be further reviewed by the SBA PCR, who shall indicate approval or disapproval of the SDBS/contracting officer's negative recommendation on Form DL 1–2004. If the SBA disapproves the SDBS/contracting officer's recommendation, the proposed action shall be appealed as provided in FAR 19.402(c)(3).

(e) All future requirements for products or services previously acquired on a small business set-aside basis and which are not subject to simplified small purchase procedures, shall be acquired on the basis of a repetitive set-aside.

2919.503 Setting aside a class of acquisitions.

2919.503–70 Class set-aside for construction acquisitions.

(a) Each requirement for construction, alterations, maintenance, and repair (including architect-engineer services), estimated to cost up to $2 million shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn only in accordance with the procedures of FAR 19.506 and 2919.506 if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 19.502–2.

2919.505 Rejection of set-aside recommendations.

The Under Secretary of Labor shall make final decisions on any appeals of the Administrator of SBA concerning a DOL contracting officer's adverse set-aside recommendation. The contracting officer's written justification in support of the decision to reject the

set-aside recommendation shall be approved by the Head of the Contracting Activity. The justification shall then be forwarded for review through the Director, Directorate of Procurement and Grant Management, and the Director, OSDBU, to the Under Secretary of Labor.

2919.506 Withdrawal or modification of set-asides.

Disagreements between the contracting officer and the SDBS concerning withdrawals or modifications of individual or class set-asides shall be resolved by the SBA PCR in the National Office, or by the Head of the Contracting Activity where no SBA PCR is available. The SDBS shall concurrently notify the OSDBU of such disagreements.

Subpart 2919.6—Certificates of Competency and Determinations of Eligibility

2919.602 Procedures.

2919.602–1 Referrals.

Referrals by the contracting officer in accordance with FAR 19.602–1 shall be approved by the head of the contracting activity prior to submission to the appropriate SBA office. The contracting officer shall forward copies of each referral to the Director, OSDBU.

Subpart 2919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2919.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2919.705–3 Solicitations.

The contracting officer shall forward to the OSDBU any solicitation expected to result in a contract exceeding $500,000 ($1 million for construction of a public facility) prior to release to the public to ensure that appropriate subcontracting provisions are included in the Request for Proposals or Invitations for Bids. The OSDBU shall be allowed up to five working days for review of the solicitation, depending on the circumstances and complexity of the individual procurement.

2919.705–4 Reviewing the subcontracting plan.

The OSDBU shall be afforded the opportunity to review subcontracting plans submitted by apparent successful offerors to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer needed changes to subcontracting plans determined to be unacceptable.

2919.705–5 Awards involving subcontracting plans.

The contracting officer shall forward for review, upon request of the Director, OSDBU, any acquisition package prior to execution of any negotiated contractual document requiring subcontracting plans.

2919.705–6 Postaward responsibilities of the contracting officer.

(a) The contracting officer shall forward to the Director, OSDBU, a copy of any subcontracting plan that was incorporated into a contract or contract modification.

(b) The contracting officer shall maintain a list of active prime contracts containing a subcontracting plan.

(c) Contracting officers shall collect quarterly and semi-annually subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. Copies of the semi-annual report, Standard Form 294 (Subcontracting Report for Individual Contracts), and the quarterly report, Standard Form 295 (Summary Subcontracting Report), shall be forwarded to the Director, OSDBU, not later than the 30th day of the month following the close of the reporting period.

2919.708 Solicitation provisions and contract clauses.

Advance approval is required prior to including any small and small disadvantaged business concerns incentive

subcontracting provisions in any contract. Requests for approval shall be submitted by the Head of the Contracting Activity through the Director, Directorate of Procurement and Grant Management, to the Director, OSDBU.

Subpart 2919.8—Contracting With the Small Business Administration

2919.802 Selecting firms for DOL acquisitions.

Contracting opportunities marketed by individual 8(a) firms may be reserved for the firm or group of firms which identified the opportunity; however, each 8(a) firm or group of firms nominated by DOL for a specific requirement must be approved by SBA for that particular requirement prior to any DOL technical discussions with the firm(s).

2919.803 Selecting acquisitions for the 8(a) program.

(a) Each DOL Agency shall identify in tentative Annual Advance Procurement Plans acquisitions to be fulfilled by 8(a) firms. Such tentative plans shall provide detailed descriptions of the nature of the services or work, or any other information pertinent to the requirement.

(b) Project officers shall also be responsible for cooperating with the OSDBU to actively locate and identify qualified 8(a) sources and to structure and tailor acquisitions to permit their participation.

2919.810 Contract administration.

(a) Contracting officers, or designees, shall conduct periodic evaluations relative to the performance of an 8(a) contract at various stages of the contract period of performance. Any problems encountered during the performance evaluation which cannot be resolved shall be referred to OSDBU for subsequent review and discussion with the appropriate SBA official.

(b) The OSDBU and SBA are to be notified at least 45 days prior to initiating final action to terminate a section 8(a) contract.

PART 2920—LABOR SURPLUS AREA CONCERNS

Subpart 2920.1—General

Sec.
2920.102 General policy.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.
2920.201–1 Total set-asides.
2920.201–70 Set-asides for construction acquisitions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8932, Mar. 5, 1985, unless otherwise noted.

Subpart 2920.1—General

2920.102 General policy.

It is the policy of the Department of Labor (DOL) to award acquisitions with eligible labor-surplus area (LSA) concerns in accordance with FAR part 20. Responsibility for implementing the DOL LSA program is assigned to the Office of Small and Disadvantaged Business Utilization.

Subpart 2920.2—Set-Asides

2920.201 Set-asides for labor surplus area concerns.

2920.201–1 Total set-asides.

Acquisitions shall be reviewed for potential combined small business/LSA set-aside consideration in accordance with FAR 19.501 and 2919.501.

2920.201–70 Set-asides for construction acquisitions.

(a) As prescribed in 2919.503–70, all acquisitions for construction, alterations, maintenance and repair (including architect-engineer services) estimated to cost up to $2 million shall be set-aside on a class basis for combined small business/LSA concern when the construction site is located in a LSA.

(b) Small business/LSA set-aside preference for construction acquisitions in excess of $2 million shall be considered on a case-by-case basis under conditions prescribed in FAR 20.201–1.

PART 2922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2922.1—Basic Labor Policies

Sec.
2922.101 Labor relations.
2922.101–3 Reporting labor disputes.
2922.101–4 Removal of items from contractor facilities affected by work stoppage.
2922.103 Overtime.
2922.103–4 Approvals.

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.
2922.604–2 Regulatory exemptions.
2922.608 Procedures.
2922.608–4 Award pending final determination.

Subpart 2922.8—Equal Employment Opportunity

2922.803 Responsibilities.
2922.804 Affirmative action programs.
2922.804–2 Construction.
2922.805 Procedures.
2922.807 Exemptions.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.
2922.1306 Complaint procedures.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.
2922.1406 Complaint procedures.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8932, Mar. 5, 1985, unless otherwise noted.

Subpart 2922.1—Basic Labor Policies

2922.101 Labor relations.

2922.101–3 Reporting labor disputes.

Potential or actual labor disputes that may interfere with contract performance shall be reported by the contracting activity to the Office of the Solicitor for legal advice or assistance.

2922.101–4 Removal of items from contractor facilities affected by work stoppage.

Prior to initiating any action under FAR 22.101–4 for removal of items from contractors' facilities, the contracting officer shall obtain legal advice from the Office of the Solicitor.

2922.103 Overtime.

2922.103–4 Approvals.

The Head of the Contracting Activity is authorized to approve the use of overtime in accordance with the limitations in FAR 22.103–4(a).

Subpart 2922.6—Walsh-Healy Public Contracts Act

2922.604 Exemptions.

2922.604–2 Regulatory exemptions.

The Secretary of Labor may exempt contracts from the Walsh Healy Public Contracts Act under FAR 22.604(c). A written finding justifying the exemption (see FAR 22.604–2(c)) shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.608 Procedures.

2922.608–4 Award pending final determination.

The contracting officer's certification for award under FAR 22.608–4(a) shall be approved by the Head of the Contracting Activity.

Subpart 2922.8—Equal Employment Opportunity

2922.803 Responsibilities.

Matters involving the applicability of Executive Order 11246 and implementing regulations of the Secretary of Labor to an acquisition or a class of acquisitions shall be reduced to writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for resolution.

2922.804 Affirmative action programs.

2922.804–2 Construction.

Heads of Contracting Activities are responsible for maintaining lists of geographical areas subject to affirmative action requirements under FAR 22.804–2. Lists of areas for which OFCCP has designated specific affirmative action requirements are available through OFCCP. The list, including updates or revisions, shall be distributed to all contract offices which acquire construction.

2922.805 Procedures.

The contract office shall maintain ample supplies of the poster (OFCCP–1420) entitled, ''Equal Opportunity is the Law'' for use as required in FAR 22–805(b). The poster (stock number 7690–00–926–8988) may be ordered from the nearest regional GSA Supply Depot.

2922.807 Exemptions.

(a) The Assistant Secretary for Administration and Management shall make the determinations in FAR 22.807(a)(1).

(b) Requests for exemptions under FAR 22.807 (a)(1), (a)(2), and (b)(5) shall be submitted in writing in accordance with FAR 22.807(c) by the contracting officer, through the Head of the Contracting Activity, to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2922.13—Special Disabled and Vietnam Era Veterans

2922.1303 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all terms of the clause at FAR 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans, under the conditions prescribed in FAR 22.1303(a) and (2) waive any requirement in FAR subpart 22.13 as prescribed in FAR 22.1303(b).

(b) Requests for waivers under paragraph (a) of this section shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2922.1306 Complaint procedures.

The contracting office shall forward complaints received about the Administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972 directly to the Assistant Secretary for Veteran's Employment Service, DOL, as prescribed in FAR 22.1306.

Subpart 2922.14—Employment of the Handicapped

2922.1403 Waivers.

(a) The Assistant Secretary for Administration and Management is authorized to (1) waive any or all of the terms of the clause at FAR 52.222–36, Affirmative Action for Handicapped Workers, under the conditions prescribed in FAR 22.1403(a) and (2) waive any requirement in FAR subpart 22.14 as prescribed in FAR 22.1403(b).

(b) Requests for waivers under paragraph (a) of this section, shall be made in writing by the contracting officer and submitted through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management.

2922.1406 Complaint procedures.

The contracting office shall forward complaints received about administration of section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

PART 2923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 2923.1—Pollution Control and Clean Air and Water

Sec.

2923.104 Exemptions.
2923.107 Compliance responsibilities.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8933, Mar. 5, 1985, unless otherwise noted.

Subpart 2923.1—Pollution Control and Clean Air and Water

2923.104 Exemptions.

(a) The Assistant Secretary for Administration and Management is authorized to exempt controls from the requirements of FAR subpart 23.1 under the conditions in FAR 23.104(c).

(b) Requests for exemption shall be made in writing by the contracting officer and forwarded through the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2923.107 Compliance responsibilities.

Conditions involving noncompliance with clean air or water standards in facilities used in performing nonexempt contracts shall be reported in writing by the contracting officer to the Head of the Contracting Activity for transmittal directly to the EPA Administrator in accordance with FAR 23.107. A copy of the report shall be promptly sent to the Director, Directorate of Procurement and Grant Management.

PART 2924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2924.1—Protection of Individual Privacy

Sec.
2924.103 Procedures.

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2924.1—Protection of Individual Privacy

2924.103 Procedures.

See 29 CFR part 70a.—Protection of Individual Privacy on Records, for the DOL Regulations relating to the maintenance or disclosure of information from systems of records on individuals.

[50 FR 8934, Mar. 5, 1985]

Subpart 2924.2—Freedom of Information Act

2924.202 Policy.

See 29 CFR part 70—Examination and Copying of Department of Labor Records, for the DOL regulations implementing the Freedom of Information Act.

[50 FR 8934, Mar. 5, 1985]

PART 2925—FOREIGN ACQUISITION

Subpart 2925.1—Buy American Act—Supplies

Sec.
2925.102 Policy.
2925.105 Evaluating offers.
2925.108 Excepted articles, materials, and supplies.

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.
2925.203 Evaluating offers.
2925.204 Violations.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.
2925.304 Excess and non-excess foreign currencies.

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8934, Mar. 5, 1985, unless otherwise noted.

Subpart 2925.1—Buy American Act—Supplies

2925.102 Policy.

(a) The Assistant Secretary for Administration and Management shall make the determinations prescribed in FAR 25.102 (a)(2) and (a)(3).

(b) The Director, Directorate of Procurement and Grant Management,

shall make the determination prescribed in FAR 25.102(a)(4) in accordance with the procedures in 2925.108.

(c) Determinations under paragraph (a) of this section shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.105 Evaluating offers.

(a) In unusual circumstances, the Assistant Secretary for Administration and Management may determine to use evaluation differentials other than those prescribed in FAR 25.105 for a particular acquisition.

(b) Requests for use of other evaluation differentials shall be directed by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management for further action.

2925.108 Excepted articles, materials, and supplies.

(a) Determinations for additional articles, materials, and supplies not included in the list under FAR 25.108(d) shall be made by the Director, Directorate of Procurement and Grant Management.

(b) Determinations shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity for approval.

(c) Contracting activities which have information justifying the removal of an item from the list under FAR 25.108(d) shall submit such information to the Director, Directorate of Procurement and Grant Management, for further disposition as prescribed in FAR 25.108(c).

Subpart 2925.2—Buy American Act—Construction Materials

2925.202 Policy.

(a) The Assistant Secretary for Administration and Management shall make the determinations prescribed in FAR 25.202(a)(2) and 2925.203.

(b) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.202(a)(3) in accordance with the procedures in 2925.108.

(c) Determinations under paragraph (a) of this section shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.203 Evaluating offers.

Unless the Assistant Secretary for Administration and Management determines otherwise, when the cost of a comparable domestic construction material exceeds by more than 6 percent for large business or 12 percent for small business or labor surplus area set-aside the cost of a foreign construction material proposed in an offer, use of the domestic construction material would unreasonably increase the cost of the contract and use of the foreign construction material is authorized and acceptable. This evaluation shall be made for each foreign construction material proposed in an offer and not specifically excepted by the solicitation. The cost of construction material shall be computed to include all delivery costs to the construction site, and the cost of foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued). The acceptable offer that remains low after adding (for evaluation purposes only) 6 percent or 12 percent, as applicable, of the cost of all foreign construction materials shall be considered the successful offer. The contract awarded under these circumstances shall contain a list of the authorized foreign construction materials as required by FAR 25.202(c) and the clause at FAR 52.225–5, Buy American Act—Construction Materials.

2925.204 Violations.

Failure of the contractor to comply with the clause at FAR 52.225–5, Buy American Act—Construction Materials, shall be documented in a report by the contracting officer and submitted to the Head of the Contracting Activity for initiation of debarment action in accordance with subpart 2909.4.

Subpart 2925.3—Balance of Payments Program

2925.302 Policy.

(a) The Director, Directorate of Procurement and Grant Management, shall make the determination prescribed in FAR 25.302(b)(3) and 25.304(c). Differentials greater than 50 percent may be authorized as prescribed in FAR 25.302(c).

(b) Determinations under paragraph (a) of this section shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

2925.304 Excess and non-excess foreign currencies.

The Director, Directorate of Procurement and Grant Management, shall consult with the Office of Management and Budget as required in FAR 25.304(c) prior to making the determination in 2925.302(a).

Subpart 2925.7—Restrictions on Certain Foreign Purchases

2925.703 Exceptions.

(a) The Assistant Secretary for Administration and Management is authorized to approve exceptions, as prescribed in FAR 25.703, for all contracts other than small purchases.

(b) Determinations under paragraph (a) of this section shall be prepared by the contracting officer and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

Subpart 2925.9—Omission of the Examination of Records Clause

2925.903 Conditions for omission.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed in FAR 25.903 (a)(1) and (a)(2).

(b) Determinations under paragraph (a) of this section shall be prepared by the contracting officer in accordance with the requirements of FAR 25.904 and submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

(c) The report required by FAR 25.903(b) shall be prepared and forwarded by the Directorate of Procurement and Grant Management.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2928—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2928.2—Sureties

2928.203 Options in lieu of sureties.

Upon receipt of any of the types of securities listed in FAR 28.203–1 (except bonds or notes received in the District of Columbia) or FAR 28.203–2, the contracting officer shall turn the securities over to the finance office.

[50 FR 8935, Mar. 5, 1985]

PART 2929—TAXES

Subpart 2929.1—General

Sec.
2929.101 Resolving tax problems.

Subpart 2929.3—State and Local Taxes

2929.303 Applications of State and local taxes to Government contractors and subcontractors.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2929.1—General

2929.101 Resolving tax problems.

Contract tax problems or questions shall be referred by the contracting officer to the Office of the Solicitor for resolution.

[50 FR 8935, Mar. 5, 1985]

Subpart 2929.3—State and Local Taxes

2929.303 Applications of State and local taxes to Government contractors and subcontractors.

(a) Contractors to be treated as agents of the Government for the purposes set forth in FAR 29.303(a) shall require the written review and approval of the Assistant Secretary for Administration and Management.

(b) Requests for approval under paragraph (a) of this section shall be submitted by the Head of the Contracting Activity, through the Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management, for further action.

[50 FR 8935, Mar. 5, 1985]

PART 2930—COST ACCOUNTING STANDARDS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2930.3—CAS Contract Requirements

2930.304 Waiver.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive CASB requirements as provided in FAR 30.304(c).

(b) Requests for waivers under paragraph (a) of this section shall be prepared by the contracting officer as prescribed in FAR 30.304(a) and submitted by the Head of the Contracting Activity.

[50 FR 8935, Mar. 5, 1985]

PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2931.1—Applicabililty

2931.101 Objectives.

Individual and class deviations concerning cost principles in FAR part 31 shall be processed as prescribed in subpart 2901.4.

[50 FR 8935, Mar. 5, 1985]

PART 2932—CONTRACT FINANCING

Subpart 2932.1—General

Sec.
2932.102 Description of contract financing methods.

Subpart 2932.4—Advance Payments

2932.402 General.

Subpart 2932.5—Progress Payments Based on Costs

2932.502 Preaward matters.
2932.502–2 Contract finance office clearance.

Subpart 2932.6—Contract Debts

2932.605 Responsibilities and cooperation among Government officials.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8935, Mar. 5, 1985, unless otherwise noted.

Subpart 2932.1—General

2932.102 Description of contract financing methods.

(a) Progress payments based on a percentage or stage of completion accomplished are authorized for use in contracts for construction, alteration, or repair.

(b) The Head of the Contracting Activity, or designee, is authorized to approve the use of progress payments based on percentage or stage of completion accomplished for contracts other than those listed in paragraph (a) of this section.

(c) Requests for approval under paragraph (b) of this section, shall be in the form of a written determination by the contracting officer that:

(1) Use of progress payments based on costs (see FAR subpart 32.5) is impracticable; and

(2) Adequate measures exist for determining percentage or stage of completion as a basis for determining payment.

Subpart 2932.4—Advance Payments

2932.402 General.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve findings and determinations and contract terms for advance payments as prescribed in FAR subpart 32.4.

(b) The contracting officer shall review and analyze the contractor's application for advance payments to determine if it meets the information requirements of FAR 32.408. Applications which do not contain the required information shall not be processed until such information is obtained from the contractor.

(c) The contracting officer shall submit a recommendation for approval or disapproval of the contractor's request through the Head of the Servicing Finance Office (see FAR 32.402(e)(2)) to the Head of the Contracting Activity for transmittal to the Director, Directorate of Procurement and Grant Management, under paragraph (a) of this section. Recommendations which do not contain the information required by FAR 32.409–1 or FAR 32.409–2 will not be processed by the Directorate of Procurement and Grant Management.

Subpart 2932.5—Progress Payments Based on Costs

2932.502 Preaward matters.

2932.502–2 Contract finance office clearance.

(a) The contracting officer shall obtain the approval of the Head of the Contracting Activity before providing a progress payment rate higher than the customary rates prescribed in FAR 32.501–1.

(b) For deviations to progress payment terms prescribed under FAR part 32, the contracting officer shall obtain approval as prescribed in 2901.403.

(c) The contracting officer shall obtain the approval of the servicing finance office for the contract before taking the action in FAR 32.502–2.

Subpart 2932.6—Contract Debts

2932.605 Responsibilities and cooperation among Government officials.

(a) The DOL contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOL finance office making payments under the contract has primary responsibility for debt collection.

(b) Each DOL Agency/Office is responsible for developing an internal debt collection system and prescribing internal procedures for collection of debts, including contract debts covered under FAR subpart 32.6. Agency/Office procedures should be in conformance

with policies and procedures issued by DOL.

PART 2933—PROTESTS, DISPUTES, AND APPEALS

Subpart 2933.1—Protests

Sec.
2933.102 General.
2933.103 Protests to the DOL Agency.
2933.104 Protests to the GAO.
2933.105 Protests to the General Services Administration Board of Contract Appeals.

Subpart 2933.2—Disputes and Appeals

2933.203 Applicability.
2933.203–70 Department of Labor Board of Contract Appeals.
2933.209 Suspected fraudulent claims.
2933.211 Contracting officer's decision.
2933.212 Contracting officer's duties upon appeal.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2933.1—Protests

SOURCE: 51 FR 40375, Nov. 6, 1986, unless otherwise noted.

2933.102 General.

The Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, shall be responsible for coordinating bid protests filed with the General Accounting Office (GAO). All communications relative to protests filed with GAO or GSBCA shall be coordinated with the Director, Office of Procurement and Grant Policy. Bid protests concerning automatic data processing (ADP) acquisitions filed with the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated by the contracting officer.

2933.103 Protests to the DOL Agency.

When protests are filed with a DOL Agency and received before award, the contracting office shall obtain the advice of the Director, Office of Procurement and Grant Policy, before making the determination under FAR 33.103(a).

2933.104 Protests to the GAO.

(a) *Notice of protest.* Upon being advised telephonically by GAO or the receipt of a protest before or after award, the Office of Procurement and Grant Policy shall inform the appropriate contracting officer and request preparation of the protest report required by FAR 33.104(a)(2). For GAO protests concerning ADP acquisitions, the Office of Procurement and Grant Policy shall also inform the Director, Directorate of Information Resources Management, who, in turn, shall notify the appropriate DOL Agency Information Resources Management (IRM) contact. As required by FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor, if the protest is after award) involved in or affected by the protest, that a protest has been filed with GAO and the basis for the protest. A written record of such notification shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of Procurement and Grant Policy will promptly furnish the same to the contracting officer. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to GAO. Copies of cover letters shall be sent to the Director, Office of Procurement and Grant Policy. Cover letters shall set forth a specified period of time for submission of comments (see FAR 33.104(a)(3)) and include instructions that any comments submitted to GAO should also be submitted simulaneously to the contracting officer and the Director, Office of Procurement and Grant Policy. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(b) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 work days after receipt by the Office of Procurement and Grant Policy of GAO's telephonic notice of the protest, or within 10 work days after receipt from GAO of a determination to use the express option, a complete report shall be submitted to GAO (see FAR 33.104(a)(2)). If the specific circumstances of the protest require a longer period, the head of the

contracting activity shall immediately notify the Office of Procurement and Grant policy which shall request, in writing, an extension of the time period in accordance with 4 CFR 21.3(d).

(2) In addition to the requirements of FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the contracting officer or the contracting officer's representative. Reports shall be prepared with the assistance of the Office of the Solicitor of Labor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit an original and one copy of the contracting officer's report to the Director, Office of Procurement and Grant Policy, with a forwarding letter to GAO signed by the Assistant Secretary for Administration and Management. When the letter and report are dated and transmitted to GAO, the Director, Office of Procurement and Grant Policy, will inform the contracting officer. The contracting officer will then distribute copies of the report to all interested parties.

(c) *Notice to GAO.* The Assistant Secretary for Administration and Management shall submit the report required by FAR 33.104(f). The report shall be submitted to the Comptroller General through the Director, Office of Procurement and Grant Policy, and the Director, Directorate of Procurement and Grant Management. For decisions concerning ADP acquisitions, the report shall also be submitted through the Director, Directorate of Information Resources Management.

2933.105 Protests to General Services Administration Board of Contract Appeals.

(a) *Notice of protest.* Immediately upon receipt of a copy of a protest to the General Services Administration Board of Contract Appeals (GSBCA), the contracting officer shall inform the Office of Procurement and Grant Policy, the Directorate of Information Resources Management, and the Office of the Solicitor of Labor. The contracting officer shall, within 1 work day after receipt of a copy of the protest, provide oral or written notice to all parties required to be notified by FAR 33.105(a)(2) and shall provide the GSBCA with a written list of all such parties to whom notice was provided within 5 work days after receipt of a copy of the protest. A copy of all notifications to interested parties and related correspondence with GSBCA shall be maintained in the contract file and a copy of the list of interested parties notified shall be provided to the Office of Procurement and Grant Policy simultaneously with submission to the GSBCA.

(b) *Submission of protest file.* An original and one copy of a protest file (see FAR 33.105(b)) plus one copy for each interested party which has a notice of intervention or a motion to intervene in accordance with the requirements of Rule 5(a)(3) of GSBCA Rules of Procedure (48 CFR 6101.5(a)(3)) shall be prepared by the contracting officer. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR 6101.4(b)). The contracting officer shall submit the file to the GSBCA within 10 work days after filing of the protest and shall also send copies to the Director, Office of Procurement and Grant Policy, and to each interested party.

(c) *Hearings.* The Solicitor of Labor, or the Solicitor's representative, is responsible for representing the contracting officer at all stages of proceedings on suspension of the agency's delegation of procurement authority (see FAR 33.105(d)), at all stages of proceedings on the merits of the protest (see FAR 33.105(e)), and with respect to any other proceedings which may be heard by the GSBCA. The head of the contracting activity shall be responsible for executing the determination required by FAR 33.105(d)(1). The Office of the Solicitor shall notify the contracting officer and the Directorate of Information Resources Management of

the results of such proceedings, including any hearing.

Subpart 2933.2—Disputes and Appeals

SOURCE: 50 FR 8936, Mar. 5, 1985, unless otherwise noted. Redesignated at 51 FR 40375, Nov. 6, 1986.

2933.203 Applicability.

(a) The Assistant Secretary for Administration and Management shall make the determination prescribed under FAR 33.203(b).

(b) Determinations under paragraph (a) of this section shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

[50 FR 8936, Mar. 5, 1985. Redesignated and amended at 51 FR 40375, Nov. 6, 1986]

2933.203–70 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract or relating to a contract made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The address of the LBCA is 1111 20th Street, NW., Washington, DC 20036.

(c) The LBCA rules of procedure are contained in 41 CFR part 29–60.

2933.209 Suspected fraudulent claims.

The contracting officer shall refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.009 to the Office of the Inspector General for further action or investigation.

2933.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Department of Labor Board of Contract Appeals (LBCA), 1111 20th Street, NW., Washington, DC 20036, and its procedures under 41 CFR part 29–60. The LBCA optional small claims (expedited) procedures and accelerated procedures under 41 CFR 29–60.211 shall also be referenced as required by FAR.

[50 FR 8936, Mar. 5, 1985. Redesignated and amended at 51 FR 40375, Nov. 6, 1986]

2933.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to the LBCA by certified mail within five (5) days of receipt. The Solicitor of Labor shall also be notified of the appeal by the contracting officer. See 41 CFR 29–60.203.

(b) The contracting officer shall prepare and transmit the data, documentation, and information required by 41 CFR 29–60.205 in the form of an appeal file and appellant or appellants counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by the LBCA.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2935—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

2935.015 Contracts for research with educational institutions and nonprofit organizations.

(a) Heads of contracting activities shall furnish to the Director, Directorate of Procurement and Grant Management, copies of basic agreements pertaining to R&D with educational institutions and nonprofit organizations in accordance with 2916.702.

(b) The Director, Directorate of Procurement and Grant Management, shall furnish the list required under FAR 35.015(b)(3) to the FAR Secretariat.

[50 FR 8936, Mar. 5, 1985]

PART 2936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2936.2—Special Aspects of Contracting for Construction

Sec.

2936.201 Evaluation of contractor performance.
2936.202 Specifications.
2936.209 Construction contracts with architect-engineer firms.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.
2936.602–1 Selection criteria.
2936.602–2 Evaluation boards.
2936.602–3 Evaluation based functions.
2936.602–4 Selection authority.
2936.602–5 Short selection processes for contracts not to exceed $10,000.
2936.603 Collecting data on and appraising firms' qualifications.
2936.604 Performance evaluation.
2936.606 Negotiations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8936, Mar. 5, 1985, unless otherwise noted.

Subpart 2936.2—Special Aspects of Contracting for Construction

2936.201 Evaluation of contractor performance.

(a) The Head of the Contracting Activity shall establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201. Normally, the performance report shall be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.201(b).

(b) Performance reports shall be made using Standard Form 1420, Performance Evaluation (Construction), as prescribed in FAR 36.701(e). Details concerning unsatisfactory performance including Government notification to the contractor as required by FAR 36.201(a)(3), and written comments by the contractor, shall also be included in the report.

(c) Performance reports shall be distributed to the Heads of Contracting Activities or designee for filing and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained for six years after the date of the report by the Office of Procurement and Grant Policy.

(d) Before making a determination of prospective contractor responsibility, the contracting officer may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.202 Specifications.

When ''brand name or equal'' product descriptions are necessary, the requirements of 2910.004–70 shall be followed.

2936.209 Construction contracts with architect-engineer firms.

(a) As required by FAR 36.209, no contract for construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates without the written approval of the Director, Directorate of Procurement and Grant Management.

(b) Requests for approval under paragraph (a) of this section, shall be made by the Head of the Contracting Activity, through the appropriate Office of the Solicitor, to the Director, Directorate of Procurement and Grant Management. The request shall include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

Subpart 2936.5—Contract Clauses

2936.516 Quantity surveys.

The Head of the Contracting Activity is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

Subpart 2936.6—Architect-Engineer Services

2936.602 Selection of firms for architect-engineer contracts.

2936.602–1 Selection criteria.

Heads of contracting activities are authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

2936.602–2 Evaluation boards.

Heads of Contracting Activities shall establish procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. DOL Agency/Office procedures shall provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the Head of the Contracting Activity to be essential to meet the Government's minimum needs.

2936.602–3 Evaluation based functions.

The selection report required in FAR 36.602–3(d) shall be prepared for the approval of the Head of the Contracting Activity.

2936.602–4 Selection authority.

The Head of the Contracting Activity is authorized to serve as the designated selection authority in accordance with FAR 36.602–4.

2936.602–5 Short selection processes for contracts not to exceed $10,000.

The selection process prescribed in FAR 36.602–5(b) shall be used for architect-engineer contracts not expected to exceed $10,000.

2936.603 Collecting data on and appraising firms' qualifications.

(a) Heads of Contracting Activities which acquire architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under paragraph (a) of this section shall be submitted to the Director, Directorate of Procurement and Grant Management, for review and approval. These procedures shall include a list of names, addresses, and telephone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually and submitted to the Director, Directorate of Procurement and Grant Management, no later than 30 days after the beginning of each fiscal year.

2936.604 Performance evaluation.

(a) The Head of the Contracting Activity shall establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report shall be prepared by the contracting officer's

authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures shall prescribe instructions for review of the report, prior to distribution, as prescribed in FAR 36.604(b).

(b) Performance reports shall be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance including Government notification to the contractor as required by FAR 36.604(a)(3) and written comments by the contractor shall also be included in the report.

(c) Performance reports shall be distributed to the Head of Contracting Activities for filing, distribution points in FAR 36.604(c), and other points required by DOL Agency/Office procedures. Copies of all reports shall also be promptly forwarded to the Director, Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for central filing. All reports shall be retained by the Office of Procurement and Grant Policy for six years after date of the report.

(d) Evaluation boards or contracting offices may contact the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, for information regarding performance evaluation reports on file, unless other procedures are prescribed in DOL Agency/Office instructions.

2936.606 Negotiations.

When a proposal is solicited from an architect-engineer firm selected for negotiations, the contracting officer shall include in the request for proposals a reference to 2936.209 of this title as required by FAR 36.606(c).

PART 2937—SERVICE CONTRACTING

Subpart 2937.1—Service Contracts—General

Sec.
2937.103 Contracting officer responsibility.

Subpart 2937.2—Consulting Services

2937.205 Management controls.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2937.1—Service Contracts—General

2937.103 Contracting officer responsibility.

Personal services contracts (see FAR 37.104) are not authorized.

[50 FR 8938, Mar. 5, 1985]

Subpart 2937.2—Consulting Services

2937.205 Management controls.

(a) Heads of contracting activities having a requirement for consulting or related services by either contract or purchase order to be awarded without competition (regardless of dollar amount) and competitive actions ($50,000 or more) are required to prepare a written justification for such services. This written justification shall be submitted to the Procurement Review Board (PRB) at least 60 days prior to the proposed effective date of the contract. Generally, requests for such services will be scheduled for review by the PRB within 21 working days. Heads of Contracting Activities retain final approval authority for all competitive acquisitions under $50,000. However, a copy of the justification for competitive acquisitions under $50,000 must be forwarded to the Assistant Secretary for Administration and Management and the Inspector General within ten days of approval. Regardless of the type of action planned, the justification shall include the following:

(1) A statement of need which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the problem, the results expected, and the manner in which the project will relate to an impact on the Contracting Activity administration and/or program management.

(3) That the services described in the request are not prohibited by OMB Circular A–120.

(4) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services are necessary.

(5) Any additional information or data which support the requirement for a contract.

(6) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional information.

(b) In accordance with FAR 37.205(b)(7), all purchase requests for consulting services initiated in the fourth quarter of the fiscal year must be submitted to the Procurement Review Board for action and subsequent approval by the Assistant Secretary for Administration and Management.

[50 FR 8938, Mar. 5, 1985]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2942—CONTRACT ADMINISTRATION

Subpart 2942.2—Assignment of Contract Administration

Sec.
2942.202 Assignment of contract administration.
2942.203 Retention of contract administration.

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8938, Mar. 5, 1985, unless otherwise noted.

Subpart 2942.2—Assignment of Contract Administration

2942.202 Assignment of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to make the decision on withholding functions in FAR 42.202(b)(2).

2942.203 Retention of contract administration.

Unless otherwise prescribed in DOL Agency/Office procedures, the Head of the Contracting Activity is authorized to perform the review in FAR 42.203(b).

Subpart 2942.6—Corporate Administrative Contracting Officer

2942.602 Assignment and location.

The Head of the Contracting Activity is authorized to approve the need for a corporate administrative contracting officer as prescribed in FAR 42.602(a)(2).

Subpart 2942.7—Indirect Cost Rates

2942.703 Policy.

The Office of Cost Determination, Directorate of Procurement and Grant Management, is responsible for establishing billing rates and indirect cost rates as prescribed in FAR subpart 42.7.

PART 2943—CONTRACT MODIFICATIONS

Subpart 2943.2—Change Orders

Sec.
2943.205 Contract clauses.

Subpart 2943.3—Forms

2943.301 Use of forms.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2943.2—Change Orders

2943.205 Contract clauses.

Heads of Contracting Activities may establish procedures, when appropriate, for authorizing the contracting officer to vary the 30-day period for submission of adjustment proposals to the clauses prescribed by FAR 43.205 (a)(1), (b)(1), (c), and (d).

[50 FR 8938, Mar. 5, 1985]

Subpart 2943.3—Forms

2943.301 Use of forms.

FAR 43.301(a)(1)(vi) requires the use of Standard Form 30 (SF–30) to effect any obligation or deobligation of contract funds after award. The SF–30 also shall be used to deobligate funds when effecting contract closeout for a cost reimbursement contract when obligated funds exceed the final contract costs. In such an instance, the SF–30 may be issued as an administrative modification on a unilateral basis if the contractor's financial release has been separately obtained. The contracting officer shall include in any unilateral contract modification issued for contract close-out a statement that the contractor has signed a release of

claims and indicate the date the release of claims was signed by the contractor.

[51 FR 40376, Nov. 6, 1986, as amended at 53 FR 3839, Feb. 9, 1988]

PART 2945—GOVERNMENT PROPERTY

Subpart 2945.3—Providing Government Property to Contractors

Sec.
2945.302 Providing facilities.
2945.302–1 Policy.

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges clause.
2945.405 Contracts with foreign governments or international organizations.
2945.407 Non-Government use of plant equipment.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.
2945.608–6 Waiver of screening requirements.
2945.610 Sale of surplus contractor inventory.
2945.610–2 Exemptions from sale by GSA.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8938, Mar. 5, 1985, unless otherwise noted.

Subpart 2945.3—Providing Government Property to Contractors

2945.302 Providing facilities.

2945.302–1 Policy.

The Head of the Contracting Activity is authorized to make the determination for providing facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

Subpart 2945.4—Contractor Use and Rental of Government Property

2945.403 Rental—Use and Charges Clause.

The Head of the Contracting Activity is authorized to make the determination for changing rent on the basis of use under the clause at FAR 52.245–9 as prescribed in FAR 45.403(a).

2945.405 Contracts with foreign governments or international organizations.

The Head of the Contracting Activity shall establish procedures, when required, for processing requests of foreign governments or international organizations to use Government property and for recovering costs for such use (see FAR 45.405).

2945.407 Non-Government use of plant equipment.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to approve the non-Government use of plant equipment as prescribed in FAR 45.407.

(b) Requests for approval under paragraph (a) of this section shall be submitted by the Head of the Contracting Activity.

Subpart 2945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2945.608 Screening of contractor inventory.

2945.608–6 Waiver of screening requirements.

(a) The Director, Directorate of Procurement and Grant Management, is authorized to waive screening requirements as prescribed in FAR 45.608–6.

(b) Requests for waiver shall be submitted by the Head of the Contracting Activity.

2945.610 Sale of surplus contractor inventory.

2945.610–2 Exemptions from sale by GSA.

(a) The Assistant Secretary for Administration and Management is authorized to seek exemptions from sale as prescribed in FAR 45.610–2.

(b) Requests for exemptions shall be submitted by the Head of the Contracting Activity to the Director, Directorate of Procurement and Grant Management, for further action.

PART 2948—VALUE ENGINEERING

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 2948.1—Policies and Procedures

2948.102 Policies.

(a) The Head of the Contracting Activity is authorized to make the determination to extend the sharing base of a value engineering change proposal (VECP) as prescribed in FAR 48.102(e).

(b) The Head of the Contracting activity is authorized to extend the sharing base of a VECP to include the entire contracting activity or any part of it (see FAR 48.102(e)).

(c) When the sharing base is extended under paragraph (a) or (b) of this section, the contracting officer shall specify the base in the contract schedule as required in FAR 48.104–1(a).

[50 FR 8939, Mar. 5, 1985]

PART 2949—TERMINATION OF CONTRACTS

Subpart 2949.1—General Principles

Sec.
2949.106 Fraud or other criminal conduct.
2949.111 Review of proposed settlements.
2949.111–70 Settlement review boards.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8939, Mar. 5, 1985, unless otherwise noted.

Subpart 2949.1—General Principles

2949.106 Fraud or other criminal conduct.

(a) Whenever fraud, such as falsified documents, false statements, or other criminal conduct related to the settlement of a terminated contract is suspected, the contracting officer shall discontinue negotiations and prepare a report of the facts. The report shall be submitted by the Head of the Contracting Activity to the Assistant Inspector General for Investigations along with copies of documents or other information connected with the suspected violation(s). A copy of the report shall also be submitted to the Director, Directorate of Procurement and Grant Management.

(b) Depending on the findings of the Assistant Inspector General for Investigations, the Head of the Contracting Activity may initiate suspension or debarment action as prescribed in FAR subpart 9.4 and subpart 2909.4.

2949.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed by the Office of the Solicitor and approved at a level higher than the contracting officer in accordance with DOL Agency procedures. Settlement agreements of $50,000 or more shall be approved by the Head of the Contracting Activity.

2949.111–70 Settlement review boards.

(a) Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves $50,000 or more.

(b) Settlement review boards may be established for actions below $50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

PART 2951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 2951.1—Contractor Use of Government Supply Sources

Sec.
2951.101 Policy.
2951.102 Authorization to use Government supply sources.
2951.102–70 Exclusive use on Government work.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8939, Mar. 5, 1985, unless otherwise noted.

Subpart 2951.1—Contractor Use of Government Supply Sources

2951.101 Policy.

It is DOL policy that cost-type contractors should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

2951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize cost-type contractors and subcontractors, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR subpart 51. This authority may be redelegated to the level of contracting officer.

(b) If the contracting officer decides to authorize a contractor to use Government supply sources under the conditions prescribed in FAR 51.102, a written request for a FEDSTRIP activity address code (see FPMR 101–26.203) shall be made directly to the DOL Agency, Headquarters Property Management Office.

2951.102–70 Exclusive use on Government work.

Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

Subpart 2951.2—Contractor Use of Interagency Motor Pool Vehicles

2951.201 Policy.

If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, as defined in FAR 51.201(a), interagency motor pool vehicles and related services for short-term use under Federal Supply Schedule Industrial Group 751.

SUBCHAPTER H—CLAUSE AND FORMS

PART 2952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
2952.000 Scope of part.

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102–1 Incorporation by reference.
2952.170 Deviations.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8940, Mar. 5, 1985, unless otherwise noted.

2952.000 Scope of part.

This part implements FAR part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction).

Subpart 2952.1—Instructions for Using Provisions and Clauses

2952.102–1 Incorporation by reference.

(a) Preprinted standard general provisions sets will be maintained by the Office of Procurement and Grant Policy, Directorate of Procurement and Grant Management, and distributed to DOL contracting activities for use during the initial FAR and DOLAR familiarization period. Contracting activities will be responsible for inserting necessary additions and alterations into individual contracts to ascertain that the general provisions are current and appropriate to the circumstances of the individual contract.

(b) At a later date, when the FAR general provisions are familiar to both DOL personnel and the Department's contractors, the general provisions will be incorporated by reference.

2952.170 Deviations.

(a) Individual or class deviations of provisions and clauses in FAR part 52 shall be authorized by the Director, Directorate of Procurement and Grant Management, as prescribed in subpart 2901.4.

(b) Any FAR provision or clause used with a deviation authorized in accordance with paragraph (a) of this section shall be identified as prescribed in FAR 52.103.

PART 2953—FORMS

Sec.
2953.000 Scope of part.

Subpart 2953.1—General

2953.103 Exceptions.
2953.108 Recommendations concerning forms.
2953.170 Forms for collection of information.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

Subpart 2953.3—Illustration of Forms

2953.300 Scope of subpart.
2953.303 Agency forms.
2953.303– DL 1–1 Department of Labor Form DL 1–1, Requisition for Equipment, Supplies, or Services.
2953.303– DL 1–90 Department of Labor Form DL 1–90, Purchase Order.
2953.303– DL 1–194 Department of Labor Form DL 1–194, Certification Prior to Acquisition of Filing Equipment.
2953.303– DL 1–2004 Department of Labor Form DL 1–2004, Small Business Procurement Determination.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 50 FR 8940, Mar. 5, 1985, unless otherwise noted.

2953.000 Scope of part.

This part (a) prescribes Department of Labor (DL) forms for use in acquisition, (b) illustrates these forms, and (c) contains procedures for exceptions to forms prescribed in FAR part 53 or this part 2953.

Subpart 2953.1—General

2953.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR part 53 shall be submitted, as prescribed in FAR 53.103, to the Director, Directorate of Procurement and Grant Management, for further action.

(b) Requests for exceptions to Department of Labor (DL) forms in part

2953 shall be handled as deviations (see subpart 2901.4).

2953.108 Recommendations concerning forms.

Recommendations concerning forms (see FAR 53.108) shall be made as prescribed in 2901.304(e).

2953.170 Forms for collection of information.

In accordance with the Paperwork Reduction Act of 1980 and 5 CFR part 1320, DOL Agencies/Offices imposing forms under contracts or subcontracts requiring the collection of information on identical items from 10 or more members of the public must obtain approval from the Office of Management and Budget.

Subpart 2953.2—Prescription of Forms

2953.200 Department of Labor forms.

This subpart prescribes Department of Labor (DL) forms for use in acquisition. Consistent with the approach used in FAR subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DOLAR in which the form usage requirements are addressed.

Subpart 2953.3—Illustrations of Forms

2953.300 Scope of subpart.

This subpart contains illustrations of Department of Labor (DL) forms used in acquisition.

2953.303 Agency forms.

This section illustrates Department of Labor (DL) forms specified by the DOLAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DL form numbers.

2953.303–DL 1–1 Department of Labor Form DL 1–1, Requisition for Equipment, Supplies, or Services.

U.S. DEPARTMENT OF LABOR REQUISITION FOR EQUIPMENT, SUPPLIES, OR SERVICES (Note General Instructions for Preparation on Reverse Side of Part 1.)	1. REQUISITION NO.	2. BUREAU
	3. PAGE NO. OF_____PAGES	4. DATE
5. ALLOTMENT AND APPROPRIATION	6. DELIVER TO: *(Specify if inside delivery is required)*	
7. FOR INFORMATION CALL *(Name, Ext.)*		
8. SIGNATURE AND TITLE OF APPROVING OFFICER		

9. ITEM NO.	10. STOCK NO.	11. DESCRIPTION OF ARTICLES OR SERVICES *(Double space between items)*	12. QUANTITY	13. UNIT OF ISSUE	14. UNIT PRICE	15. AMOUNT	

TO BE COMPLETED BY SUPPLY ACTIVITY

16. SHIPPED VIA ☐ Freight ☐ Parcel Post ☐ Mail	17. FILLED BY_____ DATE_____	18. PACKED BY_____ DATE_____	19. CHECKED BY_____ DATE_____

20. DATE OF SHIPMENT	21. BILL OF LADING NUMBER	22. ESTIMATED COST OF SHIPMENT

TO BE COMPLETED BY RECEIVING ACTIVITY (Optional – See Instruction No. 6 on Reverse)

23.

SIGNATURE_____TITLE_____DATE_____

DL FORM 1-1, REV. OCTOBER 1968

2953.303–DL 1–90 Department of Labor Form DL 1–90, Purchase Order.

Purchase Order

U.S. Department of Labor

Method of Purchase
Form Approved
Budget Bureau No. 48-R101
(See F.S.S. Cir. Ltr. No. B-89)

1. Federal Supply Schedule
2. Federal Supply Service Stock
3. Excess Property Transfer
4. Advertising (RS 3709)
5. War Powers Negotiations
6. Other Exemptions from RS 3709
7. Miscellaneous

This number must appear on all packages and papers relating to this order!

Order No. (33-40)

Date

Requisition No.

Agency

Form 1099 Required . . . . . No ☐
Soc. Sec. # Yes ☐

Page of

To

Ship To

Invitation No.

Contract No.

Time for Delivery

Discount Terms

FOB Point

Ship Via

Gov't B/L No.

Item No.		Quantity	Unit	Unit Price	Amount
				Total	

22-DIGIT ACCOUNTING CODE
10-31

Payment will be made after receipt of articles ordered and upon proper completion and submission of Invoice in triplicate to:

Signature

Name

Title

(Authorized Purchasing Officer)

Original

DL Form 1-90
(Rev. Jan. 1976)

PURCHASE ORDER TERMS AND CONDITIONS

152.252–2 CLAUSES INCORPORATED BY REFERENCE (Apr 1984). This contract incorporates the following 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:

FEDERAL AQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

52.203–1 Officials Not to Benefit (Apr 1984)

52.203–3 Gratuities (Apr 1984)

52.203–4 Covenant Against Contingent Fees (Apr 1984)

52.212–9 Variation in Quantity (Apr 1984) (In the preceding clause the permissible variations are stated in the schedule)

52.215–1 Examination of Records by the Comptroller General

52.219–13 Utilization of Women-Owned Small Businesses

52.222–3 Convict Labor (Apr 1984)

52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Apr 1984)

52.222–20 Walsh-Healey Public Contracts Act

52.222–26 Equal Opportunity (Apr 1984)

52.222–36 Affirmative Action for Handicapped Workers (Apr 1984)

52.222–40 Service Contract Act of 1965—Contracts of $2,500 or Less (Apr 1984)

52.222–41 Service Contract Act of 1965 (Apr 1984)

52.225–3 Buy American Act—Supplies (Apr 1984)

52.232–1 Payments (Apr 1984)

52.232–8 Discounts for Prompt Payment (Apr 1984) (With Alternate 1)

52.233–1 Disputes (Apr 1984)

52.243–1 Changes—Fixed Price (Apr 1984)

52.249–1 Termination for Convenience of the Government (Fixed Price) Short Form) (Apr 1984)

2953.303–DL 1–194 Department of Labor Form DL 1–194, Certification Prior to Acquisition of Filing Equipment.

Certification Prior to
Acquisition of Filing Equipment

U.S. Department of Labor

1. Requisition Number

Instructions

For standards and procedures pertaining to the disposition of records and utilization of filing equipment, refer to DLMS Chapter 1-Records Management.

Prepare original and attach to requisition. Requests originating in the National Office will be routed to Division of Information Storage and Dispositon Policy, DMPS, OASAM. Field locations will route requests to the RA-OASAM.

To:

3. From: (Requesting Office)

This request pertains to: (Check One) ☐ A. Acquisition of filing cabinets
☐ B. Acquisition of other filing equipment

Certification

I hereby certify that actions prerequisite to requesting excess, rehabilitated, or new filing equipment have been completed as indicated below:

☐ a. Agency records have been disposed of in accordance with the General Records Schedules or approved Agency Records Schedules.

☐ b. Retention periods for records no longer required have been reduced to the absolute minimum.

☐ c. Inactive records have been retired to the Federal Records Centers.

☐ d. Contents of filing cabinets have been rehoused in more economical equipment where appropriate.
(For example: shelf filing for records; shelving, storage cabinets, and similar equipment for stocks of forms, publications and office supplies.)

☐ e. Filing cabinets are being fully utilized, including top and bottom drawers, for housing records.
(Drawers filled to optimum extent - usually 3/4 full to permit ready filing and finding; contents of cabinets that are less than half full have been consolidated.)

☐ f. Filing cabinets have been redistributed within the Agency to meet needs for special types and sizes of cabinets.

☐ g. Stocks of filing cabinets have been reduced to immediate needs and any unneeded cabinets have been reassigned to points of shortage within the Agency or reported as excess to OASAM.

☐ h. The requested equipment will not be used to house records that are eligible for disposition or retirement.

Signature of Agency Records Officer (or Agency Regional Administrator) — Date

Approved:

Signature of Departmental Records Officer or Regional Administrator—OASAM — Date

DL Form 1-194 (Rev. June 1983)

2953.303–DL 1–2004 Department of Labor Form DL 1–2004, Small Business Procurement Determination.

Small Business
Procurement Determination

U.S. Department of Labor

Procurement Office

Name and address of Contracting Officer — Telephone Number

Number and Date of Requisition

Procurement Control Number

1. Description of proposed product and/or service

3. Estimated Cost

4. Proposed period of performance

5. Has exact item/service been procured previously?

2. Proposed method of procurement

(a) ____ 8(a) Procedures
(b) ____ 100% Small business/labor surplus area set-aside
(c) ____ 100% Small business set-aside
(d) ____ Partial small business/labor surplus area set-aside
(e) ____ Partial small business set-aside
(f) ____ 100% Labor surplus area set-aside/large business
(g) ____ Unrestricted—proprietary item (explain below)
(h) ____ Unrestricted—Insufficient small business competition (explain below)
(i) ____ Other (specify)

Comments:

6. Previous contract number:

7. Date of previous award:

8. Previous method of procurement:

9. Total number of responses received:

10. Number of responses from small business:

11. Name and location of previous contractor: ☐ Small business ☐ Large business

12. Total price:

Signature of Contracting Officer — Date

Review by Small and Disadvantaged Business Specialists

____ I concur with the recommendations of the Contracting Officer
____ I do not concur with the recommendations of the Contracting Officer

Comments:

Signature of Small and Disadvantaged Business Specialist — Date

Review by the Small Business Administration's Procurement Center Representative

____ I concur with the recommendations
____ Please solicit additional sources attached
____ I do not concur with the recommendations and request suspension of this procurement action pending an appeal under FPR 1-1.706-2 (a) (1). SBA Form 70 is attached.

Signature of Small Business Administration's Procurement Center Representative — Date

DL 1-2004
7/82

CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION

(Parts 3400 to 3499)

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 3401—ED ACQUISITION REGULATION SYSTEM

Sec.
3401.000 Scope of part.

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.
3401.104 Issuance.
3401.104–2 Arrangement of regulations.
3401.104–3 Copies.

Subpart 3401.3—Agency Acquisition Regulations

3401.304 Agency control and compliance procedures.

Subpart 3401.4—Deviations

3401.401 Definition.
3401.403 Individual deviations.
3401.404 Class deviations.

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.
3401.501–2 Opportunity for public comments.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19119, May 26, 1988, unless otherwise noted.

3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Department of Education (ED) acquisition regulations, referred to as the EDAR, for the codification and publication of policies and procedures of ED which implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.

The FAR and the EDAR apply to all acquisitions as defined in FAR part 2 except where expressly excluded.

3401.104 Issuance.

3401.104–2 Arrangement of regulations.

The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR (See FAR 1.104–2(c)).

3401.104–3 Copies.

Copies of the EDAR in the FEDERAL REGISTER and Code of Federal Regulations (CFR) form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

Subpart 3401.3—Agency Acquisition Regulations

3401.304 Agency control and compliance procedures.

The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

Subpart 3401.4—Deviations

3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Head of the Contracting Activity (HCA).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Procurement Executive.

Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.

3401.501–2 Opportunity for public comments.

Unless the Secretary of Education (Secretary) approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553.

Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

Contracting authority vests with the Secretary. The Secretary has delegated this authority to the Deputy Under Secretary for Management who has delegated this authority, with the right to redelegate, to the Procurement Executive and the HCA.

PART 3402—DEFINITIONS OF WORDS AND TERMS

Subpart 3402.1—Definitions

Sec.
3402.101 [Reserved]

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c), unless otherwise noted.

Subpart 3402.1—Definitions

3402.101 [Reserved]

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

The contracting officer shall insert the clause in 3452.202–1, Definitions, in all solicitations and contracts in lieu of the clause in FAR 52.202–1, except—

(a) A fixed-price research and development contract that is expected to be $2,500 or less; or

(b) A purchase order.

[53 FR 19119, May 26, 1988]

PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3403.1—Safeguards

Sec.
3403.101 Standards of conduct.
3403.101–3 Agency regulations.

Subpart 3403.2—Contractor Gratuities To Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c)

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

Subpart 3403.1—Safeguards

3403.101 Standards of conduct.

3403.101–3 Agency regulations.

ED regulations on standards of conduct are in 34 CFR part 73.

Subpart 3403.2—Contractor Gratuities to Government Personnel

3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the Procurement Executive for disposition.

Subpart 3403.3—Reports of Suspected Antitrust Violations

3403.301 General.

(a) [Reserved]

(b) Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition shall—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the Procurement Executive.

Subpart 3403.4—Contingent Fees

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Any Departmental 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 in accordance with the procedures in 3403.203.

Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3403.602 Exceptions.

Exceptions under FAR 3.602 must be approved by the Deputy Under Secretary for Management.

PART 3404—ADMINISTRATIVE MATTERS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3404.1—Contract Execution

3404.170 Ratification of unauthorized contract awards.

The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers acting in excess of the limits of their delegated authority, may be later ratified by the Department. To be effective, a ratification must be—

(a) A written document clearly stating that ratification of a previously unauthorized act is intended; and

(b) Signed by the HCA, or higher level official of the Department, who could have granted authority to enter into the commitment at the time it was made and still has the power to do so.

[53 FR 19120, May 26, 1988]

PART 3405—PUBLICIZING CONTRACT ACTIONS

Subpart 3405.2—Synopses of Proposed Contract Actions

Sec.
3405.270 Notices to perform market surveys.

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3405.2—Synopses of Proposed Contract Actions

3405.270 Notices to perform market surveys.

(a) If a sole-source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by the Government, constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;

(2) Any capabilities or experience required of a contractor and any other factors relevant to those requirements; and

(3) The criteria, including relative weights, to be used in the evaluation of responses.

[53 FR 19120, May 26, 1988]

Subpart 3405.5—Paid Advertisements

3405.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the HCA.

[53 FR 19120, May 26, 1988]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

Subpart 3408.8—Acquisition of Printing and Related Supplies

3408.870 Printing clause.

The contracting officer shall insert the clause in 3452.208–70, Printing, in all solicitations and contracts other than purchase orders.

[53 FR 19120, May 26, 1988]

PART 3409—CONTRACTOR QUALIFICATIONS

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 [Reserved]
3409.406 Debarment.
3409.406–3 Procedures.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.
3409.503 Waiver.
3409.507 Procedures.
3409.570 Offeror certification provision.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c), unless otherwise noted.

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 [Reserved]

3409.406 Debarment.

3409.406–3 Procedures.

The debarring official may enter into a settlement with a contractor under which the contractor voluntarily excludes itself from, or restricts its participation in, Government contracting and subcontracting for a specified period.

Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR subpart 9.5 or of this subpart.

3409.507 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED terminates the contract.

(b) The Procurement Executive is designated as the official to conduct reviews and make final decisions under FAR 9.507(c)(4).

3409.570 Offeror certification provision.

The contracting officer shall insert the provision in 3452.209–70, Organizational Conflict of Interest, in all solicitations.

PART 3410—SPECIFICATION STANDARDS AND OTHER PURCHASE DESCRIPTIONS

Subpart 3410.7—Use of Metric System

Sec.
3410.701 Policy of the Department of Education with respect to use of the metric system.
3410.702 Definitions.
3410.703 Responsibilities of the Department of Education with respect to use of the metric system.

AUTHORITY: 15 U.S.C. 205b.

SOURCE: 58 FR 30088, May 25, 1993, unless otherwise noted.

Subpart 3410.7—Use of Metric System

3410.701 Policy of the Department of Education with respect to use of the metric system.

It is the policy of the Department of Education to encourage use of the metric system in industry standards, consistent with the legal status of this system as the preferred system of weights and measures for United States trade and commerce.

3410.702 Definitions.

Department means the United States Department of Education.

Metric system (a) This term means the International System of Units established by the General Conference of Weights and Measures in 1960.

(b) The units are listed in Federal Standard 376A, ''Preferred Metric Units for General Use by the Federal Government.''

3410.703 Responsibilities of the Department of Education with respect to use of the metric system.

(a) Consistent with the Federal Acquisition Regulation System, contracting officers of the Department shall—

(1) Accept, without prejudice, products and services dimensioned in metric units if they are offered at competitive prices and meet the needs of the Department; and

(2) Ensure that acquisition planning considers these products and services.

(b) Consistent with the policy in the Metric Conversion Act, as amended, and in 3410.701, if the metric system is the accepted system of weights and measures in a particular industry, the Department ensures that solicitations include specifications and purchase descriptions stated in metric units of measurement.

(c) If the metric system is not the accepted system of weights and measures in a particular industry, the Department ensures that solicitations for procurements in excess of the small purchase threshold permit offerors to propose products or services in metric units of measurement, except when to do this would be detrimental to the purpose of the affected program.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3413.1—General

3413.107 Solicitation and evaluation of quotations.

(a)–(c) [Reserved]

(d) *Information provided by ED.* If ED provides information to a potential quoter concerning a request for quotations, that information must also be provided to all other potential quoters, by amending the request, if—

(1) The information is necessary to quoters in submitting quotations; or

(2) The lack of the information would be otherwise prejudicial to other potential quoters.

(e) *Late quotations.* The procedures in FAR 15.412 must be used for quotations received after the time specified for receipt at the contracting activity, except that late quotations may be accepted if the contracting officer determines in writing prior to the award that it is in the best interest of the Government to do so.

[53 FR 19121, May 26, 1988]

PART 3414—SEALED BIDDING

Subpart 3414.4—Opening of Bids and Award of Contract

Sec.
3414.406 Mistakes in bids.
3414.406–3 Other mistakes disclosed before award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3414.4—Opening of Bids and Award of Contract

3414.406 Mistakes in bids.

3414.406–3 Other mistakes disclosed before award.

(a)–(d) [Reserved]

(e) Authority is delegated to the HCA to make determinations under FAR 14.406–3 (a) through (d).

[53 FR 19121, May 26, 1988]

PART 3415—CONTRACTING BY NEGOTIATION

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

Sec.
3415.406–3 Part II—Contract clauses.
3415.407 Solicitation provisions.
3415.413–2 Alternate II.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.
3415.506 Agency procedures.

Subpart 3415.9—Profit

3415.902 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

3415.406–3 Part II—Contract clauses.

The contracting officer shall insert the clause in 3452.215–33, Order of Precedence, in all contracts other than purchase orders. The contracting officer shall use this clause in lieu of the clause in FAR 52.215–33.

3415.407 Solicitation provisions.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–12. The solicitation provision in 3452.215–70, Release of Restricted Data, informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer shall insert the provision in 3452.215–70, in all solicitations that include a reference

to FAR 52.215–12, Restriction on Disclosure and Use of Data.

3415.413–2 Alternate II.

The Department uses the Alternate II procedures in FAR 15.413–2.

Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.

(a)–(c) [Reserved]

(d) Each unsolicited proposal must contain the following certification:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization)

3415.506 Agency procedures.

(a) [Reserved]

(b)(1) The HCA is the contact point to coordinate the receipt and handling of unsolicited proposals.

(2) Offerors shall direct unsolicited proposals to the HCA.

Subpart 3415.9—Profit

3415.902 Policy.

(a) [Reserved]

(b) The contracting officer shall establish the profit or fee portion of the Government prenegotiation objective in accordance with 48 CFR chapter 3, part 315, subpart 315.9 (Department of Health and Human Services Acquisition Regulation).

PART 3416—TYPES OF CONTRACTS

Subpart 3416.3—Cost-Reimbursement Contracts

Sec.
3416.303 Cost-sharing contracts.
3416.307 Contract clauses.

Subpart 3416.6—Time-and-Materials, Labor-Hour and Letter Contracts

3416.603 Letter contracts.
3416.603–3 Limitations.

Subpart 3416.7—Agreements

3416.701 Contract clause.
3416.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

Subpart 3416.3—Cost-Reimbursement Contracts

3416.303 Cost-sharing contracts.

(a) [Reserved]

(b) *Application*. Costs that are not reimbursed under a cost-sharing contract may not be charged to the Government under any other grant, contract, cooperative agreement, or other arrangement.

3416.307 Contract clauses.

(a) If the clause in FAR 52.216–7, Allowable cost and Payment, is used in a contract with a hospital, the contracting officer shall modify the clause by deleting the words ''subpart 31.2 of the Federal Acquisition Regulation (FAR)'' from paragraph (a) and substituting ''34 CFR part 74, appendix E.''

(b) The contracting officer shall insert the clause in 3452.216–70, Additional Cost Principles, in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutional, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A–122.

Subpart 3416.6—Time-and-Materials, Labor-Hour and Letter Contracts

3416.603 Letter contracts.

3416.603–3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the Procurement Executive executes the written determination under FAR 16.603–3.

Subpart 3416.7—Agreements

3416.701 Contract clause.

The contracting officer shall insert the clause in 3452.216–71, Negotiated Overhead Rates—Fixed, in contracts with organizations that have fixed indirect cost rates with carryforward adjustments approved by the Government agency responsible for negotiating the organization's indirect cost rates.

3416.702 Basic agreements.

(a)–(d) [Reserved]

(e) *Negotiated overhead rates.* Basic agreements may include negotiated overhead rates for cost-reimbursement contracts. If a negotiated overhead rate is included, the bases to which the rate applies and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs must also be included.

PART 3417—SPECIAL CONTRACTING METHODS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3417.2—Options

3417.207 Exercise of options.

If any provision in a contract requires that an option may only be exercised within a specified time after funds become available, the same provision must specify that the date on which funds are available means the date funds become available to the contracting officer for obligation.

[53 FR 19122, May 26, 1988]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.
3419.705–2 Determining the need for a subcontracting plan.
3419.708 Solicitation provisions and contract clauses.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.
3419.870 Acquisition of technical requirements.

AUTHORITY: 5 U.S.C.; 40 U.S.C. 486(c).

SOURCE: 53 FR 19122, May 26, 1988, unless otherwise noted.

Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

3419.705–2 Determining the need for a subcontracting plan.

Incremental funding actions must be included in determining whether an acquisition meets the dollar threshold requiring a subcontracting plan.

3419.708 Solicitation provisions and contract clauses.

(a) [Reserved]

(b) If the clause ''Small Business and Small Disadvantaged Business Subcontracting Plan'' (see FAR 52.219–9) must be used in a solicitation, a notification must be included in the solicitation that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.

The signing of a contract document by the Small Business Administration (SBA) may be accepted by the contracting officer as the certification under FAR 19.801(b)(1).

3419.870 Acquisition of technical requirements.

(a) *Source selection.* (1) Except where SBA selects a concern for an award under section 8(a) or under the circumstances in paragraph (a)(5) of this section, ED selects a nominee for an 8(a) award by SBA through a limited technical competition if technical aspects, methodology, or approach are of primary importance rather than price.

(2) If limited technical competition is used, the concerns to be included are decided by the contracting officer in consultation with OSDBU and the Contracting Officer's Technical Representative (COTR).

(3)(i) ED may require the concerns participating in the limited technical competition to submit written technical proposals. Otherwise, ED holds oral discussions with the participating concerns.

(ii) In a limited technical competition, cost factors may not be included in the technical proposals nor considered during technical discussions of the proposals.

(4) ED evaluates the concerns participating in a limited technical competition based on the written technical proposals or oral discussions. ED nominates, to SBA for subcontract award, the concern that the contracting officer determines to have the best technical capability to perform the contract requirements.

(5) Instead of selecting a nominee through limited technical competition, ED may nominate one 8(a) concern to SBA if that concern has exclusive or predominant capability among 8(a)

concerns by reason of experience, specialized facilities, or technical competence to perform the work within the time required.

(6) Each concern nominated for a specific 8(a) requirement must be approved by OSDBU or SBA for that particular requirement before the contracting officer initiates negotiation of 8(a) award terms with the concern.

(b) *Negotiation of 8(a) award.* The contracting officer shall give all possible assistance required by SBA with respect to SBA's negotiation of an 8(a) award.

(c) *Delegated 8(a) award administration.* If SBA delegates responsibility to ED for administration of the 8(a) award, ED informs SBA of all 8(a) award modifications, progress payments, problems experienced by the subcontractor, and other pertinent matters requested by SBA.

PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3424.1—Protection of Individual Privacy

Sec.
3424.103 Procedures.

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3424.1—Protection of Individual Privacy

3424.103 Procedures.

(a) If the Privacy Act of 1974 applies to a contract, the contracting officer shall specify in the contract the disposition to be made of the system or systems of records upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(b) If a notice of the system of records has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the acquisition but shall not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

[53 FR 19123, May 26, 1988]

Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

The Department's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, are in 34 CFR part 5.

[53 FR 19123, May 26, 1988]

PART 3425—FOREIGN ACQUISITION

Subpart 3425.1—Buy American Act—Supplies

Sec.
3425.102 Policy.

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3425.1—Buy American Act—Supplies

3425.102 Policy.

(a) [Reserved]

(b) The HCA approves determinations under FAR 25.120(a)(4).

[53 FR 19123, May 26, 1988]

Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

The HCA is designated to make all determinations under FAR 25.302. This authority may not be redelegated.

[53 FR 19123, May 26, 1988]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3427—PATENTS, DATA, AND COPYRIGHTS

Subpart 3427.4—Rights in Data and Copyrights

Sec.
3427.470 Publication and publicity clause.
3427.471 Paperwork Reduction Act clause.
3427.472 Advertising of awards clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

Subpart 3427.4—Rights in Data and Copyrights

3427.470 Publication and publicity clause.

The contracting officer shall insert the clause in 3452.227–70, Publication and Publicity, in all solicitations and contracts other than purchase orders.

3424.471 Paperwork Reduction Act clause.

The contracting officer shall insert the clause in 3452.227–71, Paperwork Reduction Act, in all solicitations and contracts.

3427.472 Advertising of awards clause.

The contracting officer shall insert the clause in 3452.227–72, Advertising of Awards, in all solicitations and contracts other than purchase orders.

PART 3428—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3428.3—Insurance

3428.370 Contract clause.

The contracting officer shall insert the clause in 3452.228–70, Required Insurance, in all solicitations and resultant cost-reimbursement contracts.

[53 FR 19123, May 26, 1988]

PART 3432—CONTRACT FINANCING

Subpart 3432.1—General

Sec.
3432.170 Method of payment.

Subpart 3432.4—Advance Payments

3432.402 General.
3432.407 Interest.

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.
3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.
3432.771 Provision for incremental funding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(C).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

Subpart 3432.1—General

3432.170 Method of payment.

The contracting officer shall insert the clause in 3452.232–72, Method of Payment, in all solicitations and contracts.

Subpart 3432.4—Advance Payments

3432.402 General.

(a)–(d) [Reserved]

(e) The HCA is designated to make determinations under FAR 32.402(c)(1)(iii)(A). This authority may not be redelegated.

3432.407 Interest.

The HCA is designated to authorize advance payments without interest under FAR 32.407(d).

Subpart 3432.7—Contract Funding

3432.704 Limitation of cost or funds.

(a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

(1) Name and address of the contractor.

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following format:

(i) Original estimate.

(ii) Costs incurred to date.

(iii) Estimated cost to completion.

(iv) Revised estimate.

(v) Amount of adjustment.

(5) The factors responsible for the increase, such as error in estimate or changed conditions.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.

The contracting officer shall insert the clause at 3452.232–70, Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations, in contracts with educational institutions, hospitals, and State and local governments. Contracts with commercial and nonprofit organizations shall be subject to the legislative lobbying prohibitions contained in FAR 31.205–22 and Office of Management and Budget Circular A–122, respectively.

3432.771 Provision for incremental funding.

The contracting officer shall insert the provision in 3452.232–71, Incremental Funding, in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

PART 3433—PROTESTS, DISPUTES, AND APPEALS

Subpart 3433.1—Protests

Sec.

3433.101 Definitions.
3433.103 Protests to the agency.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.
3433.212 Contracting officer's duties upon appeal.
3433.214 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

Subpart 3433.1—Protests

3433.101 Definitions.

Filed, as used in this subpart, means that a document has been received by the contracting officer, the General Accounting Office (GAO), or the General Services Administration Board of Contract Appeals (GSBCA).

3433.103 Protests to the agency.

(a)(1) Protests to ED based on alleged improprieties in any type of solicitation that are apparent before bid opening or the closing date for receipt of proposals, must be filed before bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, protests based on alleged improprieties that do not exist in the initial solicitation, but that are added later, must be filed not later than the next closing date for receipt of proposals following the addition. In other cases, protests to ED must be filed not later than ten (10) Federal Government working days after a basis for protest is known or should have been known, whichever is earlier.

(b) With the concurrence of the HCA, the contracting officer is authorized to make a determination, using the criteria in FAR 33.103(a), to award a contract before resolution of a protest.

Subpart 3433.2—Disputes and Appeals

3433.203 Applicability.

The General Services Administration Board of Contract Appeals (GSBCA) is designated to hear any appeal from a final decision of a contracting officer issued pursuant to the ''Disputes'' clause in a contract. The rules and regulations of the GSBCA are in 48 CFR

chapter 5, appendix B, and govern the processing of these appeals.

3433.212 Contracting officer's duties upon appeal.

The Office of the General Counsel is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the GSBCA.

3433.214 Contract clause.

The contracting officer shall use the clause in FAR 52.233–1, Disputes, with its Alternate I.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3437—SERVICE CONTRACTING

Subpart 3437.1—Service Contracts—General

Sec.
3437.102 Policy.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clauses.
3437.271 Services of consultants clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

Subpart 3437.1—Service Contracts—General

3437.102 Policy.

If a service contract requires one or more end items of supply, FAR subpart 37.1 and this subpart apply only to the required services.

Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting clause.

The contracting officer shall include the clause in 3452.237–70, Identification of Reports Under Consulting Services Contracts, in all solicitations and contracts for consulting services.

3437.271 Services of consultants clause.

The contracting officer shall insert the clause in 3452.237–71, Services of Consultants, in all solicitations and resultant cost-reimbursement contracts.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3442—CONTRACT ADMINISTRATION

Subpart 3442.7—Indirect Cost Rates

Sec.
3442.705 Final indirect cost rates.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.
3442.7002 Litigation and claims clause.
3442.7003 Delays clause.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

Subpart 3442.7—Indirect Cost Rates

3442.705 Final indirect cost rates.

The Chief, Cost Determination Branch, Grants and Contracts Service, is delegated the authority to establish final indirect cost rates under FAR 42.705–1 and 42.705–2.

Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.

(a) The contracting officer shall insert the clause in 3452.242–72, Withholding of Contract Payments, in all solicitations and contracts other than purchase orders.

(b) ED may withhold contract payments if any report required to be submitted by the contractor is overdue, or if the contractor fails to perform or deliver work or services as required by the contract.

(c) The contracting officer shall notify the contractor in writing that payments are being withheld in accordance with the clause.

3442.7002 Litigation and claims clause.

The contracting officer shall insert the clause in 3452.242–70, Litigation and Claims, in all solicitations and resultant cost-reimbursement contracts.

3442.7003 Delays clause.

The contracting officer shall insert the clause in 3452.242–71, Notice to the Government of Delays, in all solicitations and contracts other than purchase orders.

Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

(a) It is the policy of ED that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer shall insert the clause in 3452.242–73, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

PART 3443—CONTRACT MODIFICATIONS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

3443.106 Contract clause.

The contracting officer shall insert the clause in 3452.243–70, Key Personnel, in all solicitations and resultant cost-reimbursement contracts.

[53 FR 19125, May 26, 1988]

PART 3445—GOVERNMENT PROPERTY

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3445.4—Contractor Use and Rental of Government Property

3445.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA shall determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

[53 FR 19125, May 26, 1988]

PART 3447—TRANSPORTATION

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Subpart 3447.70—Foreign Travel

3447.7000 Foreign travel clause.

The contracting officer shall insert the clause in 3452.247–70, Foreign Travel, in all solicitations and resultant cost-reimbursement contracts.

[53 FR 19125, May 26, 1988]

SUBCHAPTER H—CLAUSES AND FORMS

PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3452.2—Texts of Provisions and Clauses

Sec.
3452.202–1 Definitions.
3452.208–70 Printing.
3452.209–70 Organizational conflict of interest.
3452.215–33 Order of precedence.
3452.215–70 Release of restricted data.
3452.216–70 Additional cost principles.
3452.216–71 Negotiated overhead rates—fixed.
3452.227–70 Publication and publicity.
3452.227–71 Paperwork Reduction Act.
3452.227–72 Advertising of awards.
3452.228–70 Required insurance.
3452.232–70 Prohibition against the use of ED funds to influence legislation or appropriations.
3452.232–71 Incremental funding.
3452.232–72 Method of payment.
3452.237–70 Identification of reports under consulting services contracts.
3452.237–71 Services of consultants.
3452.242–70 Litigation and claims.
3452.242–71 Notice to the Government of delays.
3452.242–72 Withholding of contract payments.
3452.242–73 Accessibility of meetings, conferences, and seminars to persons with disabilities.
3452.243–70 Key personnel.
3452.247–70 Foreign travel.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19125, May 26, 1988, unless otherwise noted.

Subpart 3452.2—Texts of Provisions and Clauses

3452.202–1 Definitions.

As prescribed in 3402.201, insert the following clause in solicitations and contracts:

DEFINITIONS (AUG 1987)

(a) The term *Secretary* or *Head of the Agency* (also called *Agency Head*) means the Secretary or Under Secretary of the Department of Education; and the term *his/her duly authorized representative* means any person, persons, or board authorized to act for these officials.

(b) The term *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.

(c) The term *Contracting Officer's Technical Representative* means the person representing the Government for the purpose of technical monitoring of contract performance. The Contracting Officer's Technical Representative (COTR) is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost or price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term *Department* or *ED* means the Department of Education.

(e) Except as otherwise provided in this contract, the term *subcontract* includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

3452.208–70 Printing.

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

PRINTING (AUG 1987)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, and printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, shall not be deemed to be printing. A production unit is defined as one sheet, size 8½ by 11 inches, and one side and color only.

(End of clause)

3452.209–70 Organizational conflict of interest.

As prescribed in 3409.570, insert the following provision in all certifications:

ORGANIZATIONAL CONFLICT OF INTEREST (OCT 1987)

The offeror certifies that it (__) is (__) is not aware of any potential organization conflict of interest that it may have under this procurement. If the offeror is aware of any potential conflict of interest, the offeror shall submit a disclosure statement fully describing the situation. An organizational conflict of interest is as defined and illustrated in FAR 9.5.

(End of provision)

3452.215–33 Order of precedence.

As prescribed in 3415.406–3, insert the following clause in contracts:

ORDER OF PRECEDENCE (AUG 1987)

Any inconsistency in this contract shall be resolved by giving precednece in the following order:

(a) The Schedule (exclusing the work statement or specification).

(b) The contract clauses (Section I).

(c) Any incorporated documents, exhibits, or attachment, excluding the work statement or specifications and the contractor's proposal, representations, and certifications,

(d) The work statement or specifications, and

(e) The contractor's proposal, as amended, including representations and certifications.

(End of clause)

3452.215–70 Release of restricted data.

As prescribed in 3415.407, insert the following provision in solicitations:

RELEASE OF RESTRICTED DATA (AUG 1987)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215–12, Restriction on Disclosure and Use of Data, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act. the Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under the Freedom of Information Act. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold nor deny access to data requested pursuant to the Act and that the Government's FOI officials shall make that determination;

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to the Act; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any propose, including the release of the information pursuant to requests under the Act.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with (1) a restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.515–12, *Restriction on Disclosure and Use of Data*, or (2) a statement taking exceptions to the terms of (a) or (b) of this provision.

(End of provision)

3452.216–70 Additional cost principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

ADDITIONAL COST PRINCIPLES (AUG 1987)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basic as the allocation of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

(End of clause)

3452.216–71 Negotiated overhead rates—fixed.

Insert the following clause in cost-reimbursement contracts as prescribed in 3416.701:

NEGOTIATED OVERHEAD RATES—FIXED (AUG 1987)

(a) Notwithstanding the provisions of the clause entitled ''Allowable Cost and Payment'', the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. If the application of the negotiated fixed rates(s) against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for that period, the greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the contracting officer or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carry-forward adjustments, if any, by the contractor and the contracting officer, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the contracting officer, subject to appropriate adjustment when the final rates for the fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed rate or rates or to the amount of any carry-forward adjustment under this clause shall not be considered a dispute for decision by the contracting officer within the meaning of the Disputes clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates, in accordance with the terms of the Allowable Cost and Payment clause, in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the contracting officer or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the contractor and the contracting officer or the duly authorized representative, as evidenced by negotiated overhead rate agreements signed by both parties, shall satisfy the requirements of paragraphs (b), (c), (d), and (e) of this clause.

(End of clause)

3452.227–70 Publication and publicity.

As prescribed in 3427.470, insert the following clause in all solicitations and contracts other than purchase orders:

PUBLICATION AND PUBLICITY (AUG 1987)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the Contracting Officer's Technical Representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgment shall read substantially as follows:

''This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number _____. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

(End of clause)

3452.227–71 Paperwork Reduction Act.

As prescribed in 3427.471, insert the following clause in all solicitations and contracts:

PAPERWORK REDUCTION ACT (AUG 1987)

(a) The Paperwork Reduction Act of 1980 (Pub. L. 96–511) applies to contractors that collect information for use or disclosure by the Federal Government.

If the contractor will collect information requiring answers to identical questions from 10 or more people then no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Deputy Under Secretary for Management (DUSM) or his/her delegate within the Department of Education (ED) and the Office of Management and Budget (OMB). Contractors and Contracting Officers' Technical Representatives shall be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring DUSM and OMB clearance.

(b) The contractor shall obtain the required DUSM and OMB clearance through the Contracting Officer's Technical Representative before expending any funds or making public contacts for the collection of information described in paragraph (a) of this clause. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for DUSM and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

3452.227–72 Advertising of awards.

As prescribed in 3427.472, insert the following clause in all solicitations and contracts other than purchase orders:

ADVERTISING OF AWARDS (AUG 1987)

The contractor agrees not to refer to awards issued by the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal Government or is necessarily considered by the Government to be superior to other products or services.

(End of clause)

3452.228–70 Required insurance.

As prescribed in 3428.370, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

REQUIRED INSURANCE (AUG 1987)

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR subpart 28.3 or by the written direction of the contracting officer. Prior written approval of the contracting officer shall be required with respect to any insurance policy the premiums for which the contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

(End of clause)

3452.232–70 Prohibition against the use of ED funds to influence legislation or appropriations.

The following clause is to be used in accordance with 3432.770:

PROHIBITION AGAINST THE USE OF ED FUNDS TO INFLUENCE LEGISLATION OR APPROPRIATIONS (APR 1987)

No part of any funds under this contract shall be used to pay the salary and expenses of any contractor, or agency acting for the contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

(End of clause)

3452.232–71 Incremental funding.

As prescribed in 3452.771, insert the following provision in solicitations:

INCREMENTAL FUNDING (AUG 1987)

(a) Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled ''Limitation of Funds'' in FAR 52.232–22. Under that clause, which will be included in the resultant contract, initial

funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for cost incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Cost clause in FAR 52.232–20 shall supersede the Limitation of Funds clause in the event the contract becomes fully funded.

(End of provision)

3452.232–72 Method of payment.

As prescribed in 3432.170, insert the following clause in all solicitations and contracts:

METHOD OF PAYMENT (AUG 1987)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The contractor shall forward the following information in writing to (designated payment party) not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution:

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of that institution and its nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to (designated payment office) in writing at least 30 days before the effective date of the change. It is the contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the contractor's official authorized to provide it, as well as the contractor's name and contract number.

(End of clause)

3452.237–70 Identification of reports under consulting services contracts.

As prescribed in 3437.270, insert the following clause in all solicitations and contracts for consulting services:

IDENTIFICATION OF REPORTS UNDER CONSULTING SERVICE CONTRACTS (AUG 1987)

The contractor shall set forth on the cover of every report submitted pursuant to this contract the following information:

(a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was competitively or noncompetitively awarded; (e) name of the Contracting Officer's Technical Representative and complete office identification and address; and (f) names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

3452.237–71 Services of consultants.

As prescribed in 3437.271, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

SERVICES OF CONSULTANTS (AUG 1987)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled ''Subcontracts Under Cost-Reimbursement and Letter Contracts,'' the prior written approval of the contracting officer shall be required:

(a) If any employee of the contractor is to be paid as a ''consultant'' under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $150, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by consultant to others for performing consultant services of a similar nature.

(End of clause)

3452.242–70 Litigation and claims.

As prescribed in 3442.7002, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (AUG 1987)

(a) The contractor shall give the contracting officer immediate notice in writing of:

(1) Any action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for a cost which is allowable under the clause entitled ''Allowable Cost and Payment.''

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall:

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claim (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or other written direction of the contracting officer, but which the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of clause)

3452.242–71 Notice to the Government of delays.

As prescribed in 3442.7003, insert the following clause in all solicitations and contracts other than purchase orders:

NOTICE TO THE GOVERNMENT OF DELAYS (AUG 1987)

Whenever the contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the contracting officer.

(End of clause)

3452.242–72 Withholding of contract payments.

As prescribed in 3442.7001, insert the following clause in all solicitations and contacts other than purchase orders:

WITHHOLDING OF CONTRACT PAYMENTS (AUG 1987)

Notwithstanding any other payment provisions of this contract, failure of the contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, or failure to meet any of the requirements of the contract, will result in the withholding of payments under this contract in such amounts as the contracting officer deems appropriate, unless the failure arises out of causes beyond the control, and without the fault of negligence, of the contractor, as defined by the clause entitled ''Excusable Delays'' or ''Default'', as applicable. The Government shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted. Payment will be withheld until the failure is cured, a new delivery schedule is agreed upon, or payment is made as part of a termination settlement.

(End of clause)

3452.242–73 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (AUG 1987)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

3452.243–70 Key personnel.

As prescribed in 3443.106(b), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

KEY PERSONNEL (AUG 1987)

The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without the written consent of the contracting officer; *provided,* that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect that addition or deletion personnel.

(End of clause)

3452.247–70 Foreign travel.

As prescribed in 3447.7000, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

FOREIGN TRAVEL (AUG 1987)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, ''foreign travel'' means travel outside the fifty States comprising the United States, the District of Columbia, and Canada.

(End of clause)

CHAPTER 35—PANAMA CANAL COMMISSION

(Parts 3500 to 3599)

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SUBCHAPTER A—GENERAL

PART 3501—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7635, Mar. 2, 1990, unless otherwise noted.

3501.000 Scope of part.

This part sets forth basic policies and general information about the Panama Canal Commission Acquisition Regulation, referred to as the PAR, and its relationship to the Federal Acquisition Regulation, referred to as the FAR.

Subpart 3501.1—Purpose, Authority, Issuance

3501.101 Purpose.

(a) The Federal Acquisition Regulations System brings together, in title 48 of the Code of Federal Regulations (CFR), the acquisition regulations of all executive agencies of the United States Government. This subpart establishes the PAR as chapter 35 of title 48, CFR. The FAR, which is the primary document for all agencies within this system, is issued as chapter 1 of title 48, CFR.

(b) The purpose of the PAR is to implement the FAR where further implementation is needed and to supplement the FAR when coverage is needed for subject matter not contained in the FAR. The PAR is not, by itself, a complete regulation. It must be used in conjunction with, and is subordinate to, the FAR.

3501.102 Authority.

The PAR and amendments thereto are issued by the Administrator of the Panama Canal Commission (Commission) pursuant to the authority of section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, and other applicable law.

3501.103 Applicability.

The FAR and the PAR apply to all acquisitions of the Commission, except where expressly excluded.

3501.104 Issuance.

3501.104–1 Publication and code arrangement.

(a) The PAR is published in—

(1) The FEDERAL REGISTER;

(2) Cumulated form at 48 CFR chapter 35; and

(3) A separate loose-leaf form.

3501.104–2 Arrangement of regulations.

(a) *General.* The PAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding PAR coverage.

(b) *Numbering.* (1) Where the PAR implements the FAR, the implementing part, subpart, section or subsection of the PAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 35 or a 350 such that there will always be four numbers to the left of the decimal. For example, the PAR implementation of FAR 1.104–1 is shown as 3501.104–1 and the PAR implementation of FAR subpart 24.1 is shown as subpart 3524.1. Similarly, individual paragraphs at the section and subsection levels of the PAR correspond, to the extent feasible, to the FAR paragraph designations that are being implemented.

(2) Material which supplements the FAR as new parts, subparts, sections, or subsections will be assigned the numbers 70 and up. For example, there is no FAR coverage on the preferential acquisition of supplies and services obtainable in the Republic of Panama as provided for in Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977. This supplementary material is identified as part 3570.

(3) Because the PAR implements the FAR only where further implementation is necessary, there are gaps in the PAR numbering and paragraphing sequence. For example, the PAR skips from part 3510 to part 3513, from subpart 3501.4 to subpart 3501.6, and from section 3501.301 to section 3501.303 because the FAR coverage at parts 11 and 12, subpart 1.5, and section 1.302, respectively, does not require further implementation. Similarly, section 3501.405 of the PAR begins at paragraph (d) because paragraphs (a), (b), and (c) at FAR 1.405 do not require further implementation.

(c) *References and citations.* (2) This regulation may be referred to as the Panama Canal Commission Acquisition Regulation or the PAR. References to PAR material outside this regulation may be cited in informal documents as PAR followed by the identifying number. For example, this subparagraph would be informally cited as PAR 3501.104–2(c)(2). In formal documents outside this regulation, such as legal briefs, references to PAR material should include reference to title 48 of the Code of Federal Regulations. For example, this subparagraph would be formally cited as 48 CFR 3501.104–2(c)(2).

(3) References to FAR or PAR material within this regulation will be made as follows:

(i) FAR parts or subparts will be referred to in those terms followed by the identifying number—for example, FAR part 1; FAR subpart 1.1. FAR subdivisions below the subpart level (i.e., sections, subsections, paragraphs, subparagraphs, or subdivisions) will simply state FAR followed by the identifying number—for example, FAR 1.104–2(c)(3)(i).

(ii) PAR parts or subparts will be referred to only as part or subpart followed by the identifying number—for example, part 1; subpart 1.1. PAR subdivisions below the subpart level will simply indicate the identifying number—for example, this subdivision would be cited as 3501.104–2(c)(3)(ii).

3501.104–3 Copies.

Copies of the PAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of the loose-leaf PAR are distributed within the Panama Canal Commission and may be obtained from the Administrative Services Division, Records Management Branch, telephone (507) 52–7642.

3501.105 OMB approval under the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in

the PAR have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511). OMB control number 3207–0007 is assigned to the following PAR sections:

PAR Sections

3513.107(a)(4)(i)
3513.107(a)(4)(ii)
3513.107(a)(4)(iii)
3513.107(a)(4)(iv)
3515.804–6
3536.571

Subpart 3501.2—Administration

3501.201 Maintenance of the FAR.

3501.201–1 The two councils.

(e)(2) The Commission's Procurement Executive, in consultation with the General Counsel, is responsible for overseeing the development of the agency position on proposed revisions to the FAR and responding to the FAR Secretariat when such action is appropriate.

Subpart 3501.3—Agency Acquisition Regulations

3501.301 Policy.

(a)(1) The Procurement Executive, in consultation with the General Counsel and such other agency officials as may be appropriate, is responsible for the development, preparation, and maintenance of PAR issuances by the Administrator. In addition, the Procurement Executive is authorized to issue internal policies, procedures, instructions, and guidelines to clarify or implement the FAR or PAR within the Commission. Such internal issuances are subject to review by the General Counsel.

(2) Heads of contracting activities and division chiefs are authorized to issue internal guidance of the type described in FAR 1.301(a)(2).

(b) Public participation in the promulgation of the PAR shall be in the same manner as specified for the FAR in FAR subpart 1.5. Where solicitation of public comment on significant revisions is impracticable prior to promulgation, the revisions may be set forth in temporary regulations. Comments will be solicited on the temporary regulations and considered prior to formulating the final regulations.

3501.303 Publication and codification.

(a) The PAR is codified as chapter 35 in title 48, Code of Federal Regulations.

(c) The PAR replaces the former Part 87—Procurement, of the Panama Canal Administration and Regulations (PCAR), in its entirety.

3501.304 Agency control and compliance procedures.

(a) Whenever contracting activities and organizational components thereof wish to propose for publication in the FEDERAL REGISTER an agency acquisition regulation that they consider necessary to implement or supplement the FAR or PAR, they must prepare a memorandum that explains the need, background, justification, and significant aspects of the proposed regulation and send it to the Procurement Executive. The Procurement Executive and General Counsel will (1) review the proposed regulation to assure compliance with FAR part 1, and (2) either approve or disapprove it. If approved, the Procurement Executive will prepare the proposed regulation in FEDERAL REGISTER format for issuance by the Administrator.

Subpart 3501.4—Deviations From the FAR and PAR

3501.401 Definition.

A deviation from the PAR is defined in the same manner as a deviation from the FAR (see FAR 1.401).

3501.403 Individual deviations.

Requests for individual deviations from the FAR and the PAR shall be submitted by the Head of the Contracting Activity (HCA) through the General Counsel to the Procurement Executive for approval. Requests submitted shall cite the specific part of the FAR or PAR from which it is desired to deviate, shall set forth the nature of the deviation(s), and shall give the reasons for the action requested. The Procurement Executive shall transmit copies of approved individual FAR deviations to the FAR Secretariat.

3501.404 Class deviations.

Requests for class deviations to the PAR shall be submitted in advance by the HCA through the General Counsel to the Procurement Executive for processing in accordance with FAR 1.404 and this section. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 3501.403. The Procurement Executive may approve class deviations to the FAR and the PAR and shall transmit copies of approved class FAR deviations to the FAR Secretariat as required by FAR 1.404.

3501.405 Deviations pertaining to treaties and executive agreements.

(d) The Procurement Executive is designated as the central control point within the Commission for transmittal of deviations from the FAR required to comply with treaties and executive agreements to which the United States is a party. Copies of the text of any deviation authorized in accordance with FAR 1.405 (b) or (c) shall be forwarded by the HCA to the Procurement Executive through the General Counsel for further transmittal to the FAR Secretariat.

(e) When a deviation required to comply with a treaty or executive agreement is inconsistent with FAR coverage based on law, the Procurement Executive shall forward a request for deviation to the FAR Secretariat for processing as required by FAR 1.405(e).

Subpart 3501.6—Contracting Authority and Responsibilities

3501.601 General.

(a) Commission contracting activities are established within the General Services Bureau for the acquisition of supplies and services, and the Engineering and Construction Bureau for the acquisition of construction, including architect-engineer services and other services related to construction. The Directors of these bureaus are designated by the Administrator as Heads of Contracting Activities and are the officials who have the authority and responsibility to appoint contracting officers to contract for authorized supplies and services, including construction and architect-engineer services, that fall within the scope of their respective contracting activities.

(b) In addition, bureau directors and heads of independent units are delegated contracting authority, not to exceed amounts established by the General Services Director, for the decentralized procurement of supplies and services on Division Purchase Orders (see 3513.505–71). This authority is granted to assist Commission activities in expediting minor purchases. Such authority may be redelegated pursuant to 3513.505–71(b)(1)(ii).

3501.602 Contracting officers.

3501.602–3 Ratification of unauthorized commitments.

(a) *Definitions.*

Responsible contracting officer, as used in 3501.602–370, means the individual at the appropriate level of contracting authority who can execute any contractual document that may be required to formalize an unauthorized commitment. Depending on the circumstances, the term can apply to the existing contracting officer, the prospective contracting officer (when a purchase order or contract does not exist) or, in the case of a contracting officer who acted in excess of the limits of his delegated authority, the next individual in the chain of contracting authority who has the appropriate authority to execute the necessary contractual document.

(b) *Policy.* (1) Unauthorized commitments do not legally obligate the Commission for the expenditure of funds. If an unauthorized commitment would have been valid had it been authorized by a contracting officer acting within the limits of his delegated authority, then the unauthorized commitment may be ratified in accordance with the procedures prescribed in 3501.602–370. If an unauthorized commitment is otherwise improper, it cannot be ratified and the Commission must deny legal liability, in which case the individual who made the unauthorized commitment may be personally liable for such action.

(2) The cognizant Head of the Contracting Activity (HCA) is the ratification official for the approval of unauthorized commitments and the Procurement Executive is the reviewing official for such approvals. The HCA may ratify an unauthorized commitment only if:

(i) The conditions in FAR 1.602–3(c) are applicable, and

(ii) The Procurement Executive concurs with the proposed ratification.

3501.602–370 Procedures.

These procedures apply to all unauthorized commitments, whether written or oral and without regard to dollar value. Unauthorized commitments (other than claims to be processed in accordance with FAR subpart 33.2) shall be processed as follows:

(a) Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, that person shall be advised by the cognizant contracting office that such work is being or was performed at that person's own risk pending establishment of valid contractual coverage.

(b) The individual who made the unauthorized commitment shall furnish to the responsible contracting officer all records and documents concerning the commitment and a complete, written statement of the facts including, but not limited to, a description of the work or product ordered; why the work or product was necessary to and for the benefit of the Commission; the estimated or agreed upon price; citation of funds available at time of commitment; the current status of performance by the actual or prospective contractor; the reason why normal acquisition procedures were not followed and, if a contract does not exist, a statement as to why the prospective contractor was selected including, if applicable, identification of other sources that were considered.

(c) The responsible contracting officer shall—

(1) Obtain from the head of the requisitioning office with appropriate approval authority:

(i) Affirmation that the Commission has or will obtain a benefit from the unauthorized commitment,

(ii) A written certification by the responsible funding certification officer that funds presently are available and were available at the time the unauthorized commitment was made, and when applicable,

(iii) A statement of corrective action that office will take to preclude repetition of the incident;

(2) Review and determine the adequacy of all facts, records, and documents furnished, and when necessary, obtain any additional material or information pertinent to the review and evaluation of the unauthorized commitment;

(3) Determine whether the price is fair and reasonable, and state in the record the reason therefor;

(4) Prepare, certify, and obtain any necessary written approval of a justification for other than full and open competition when required pursuant to FAR subpart 6.3;

(5) State in the record the corrective action to be taken to preclude repetition of the incident if the individual that made the unauthorized commitment is under the supervision of the responsible contracting officer; and

(6) Forward the request for ratification (i.e., all the information required in paragraphs (b) and (c) of this subsection) to the cognizant HCA, together with a written recommendation of an appropriate course of action including, at a minimum, a specific recommendation as to whether payment should be made and the reasons therefor.

(d) The cognizant HCA, upon receipt and review of the request for ratification file, shall determine whether ratification is in order. If so, the HCA shall forward the file to the Procurement Executive for review. If not, the HCA shall return the file to the responsible contracting officer, together with a written explanation for the decision and instructions for disposition of the case.

(e) The Procurement Executive shall review proposed ratifications submitted by HCAs. If the Procurement Executive concurs that ratification is in order, he shall obtain General Counsel concurrence that payment may be

made and return the file to the cognizant HCA for that individual's ratification and subsequent return to the responsible contracting officer together with, when appropriate, instructions to issue a purchase order, contract, or contract modification, as applicable. If the Procurement Executive does not concur with the proposed ratification, he shall return the file to the HCA, together with a written explanation for the decision and instructions for disposition of the case. He will provide a copy to the General Counsel.

3501.603 Selection, appointment, and termination of appointment.

3501.603–1 General.

Heads of Contracting Activities may appoint as contracting officers one or more capable and qualified individuals of their respective staffs. These appointments may be made by memoranda delegating contracting authority, including any limitations to such authority, to positions or to named individuals. Appointments shall be evidenced by a ''Certificate of Appointment'', as required by FAR 1.603–3. If contracting authority is delegated to a position by memorandum, the ''Certificate of Appointment'' shall state the name of the individual assigned to the position.

3501.670 Legal review of proposed contract actions.

3501.670–1 Contract actions requiring legal review.

The following contract actions shall be submitted to the General Counsel for review for legal sufficiency:

(a) All proposed contracts with an estimated cost of $100,000 or more (in advance of issuance);

(b) All alleged mistakes in bids, other than apparent clerical mistakes that can be corrected pursuant to FAR 14.406–2;

(c) All determinations and findings required under the FAR;

(d) All proposed utility contracts;

(e) All proposed contracts containing insurance requirements not prescribed in the FAR or this PAR;

(f) In sealed bid procurements, all proposed awards to other than the lowest responsible and responsive bidder;

(g) Rejections of all bids and cancellations of invitations for bids;

(h) Proposed letter contracts;

(i) Written protests, whether before or after award;

(j) Unusual, novel, or unique proposed agreements, and unsolicited proposals that are to be negotiated pursuant to FAR subpart 15.5 and subpart 3515.5;

(k) Proposed ADP contracts of $25,000 or more when purchase is to be from other than a Federal Supply Service contract source;

(l) Termination actions, including pre-termination letters;

(m) All actions taken under the Disputes clause, including final decisions;

(n) Any action concerning suspension or debarment of an individual or concern;

(o) Deviations from the FAR or PAR;

(p) Any contract matter relating to litigation, disputes, or protest resolution before the courts of the United States or of the Republic of Panama, or before the Corps of Engineers Board of Contract Appeals or the Comptroller General of the United States;

(q) Determinations of nonresponsibility;

(r) Any proposed contract modification, including proceed orders, which may result in a change in the contract price of more than $25,000, or any proposed contract modification or proceed order granting a time extension of more than 20 calendar days;

(s) Any proposed contract modification resulting from either a contractor's settlement proposal under the Termination for Convenience clause, or a contractor's claim under the Suspension of Work clause, regardless of the contract value or the terms of the proposed modification;

(t) Freedom of Information Act and Privacy Act matters involving contractors or arising under or in relation to any contract;

(u) Administrative setoffs to recoup Government funds under any contract; and

(v) Requests for approval of advance payments on contracts other than those excluded in FAR 32.404.

3501.670–2 Documents to be submitted for legal review.

The following documents are to be submitted in connection with contract actions requiring legal review pursuant to 3501.670–1:

(a) For proposed construction contracts, a copy of the solicitation documents, excluding drawings, prior to the time they are furnished to prospective offerors, when feasible;

(b) For all other proposed contracts and agreements, a copy of the document to be used in the solicitation and/or award, including any other documents, excluding drawings, which support the proposed procurement action, prior to the time they are mailed to the prospective offerors, when feasible;

(c) For all other contract actions not specified in paragraph (a) or (b) of this subsection, a copy of the document itself and copies of all other documents, excluding drawings, relating to the action.

3501.670–3 General Counsel's legal review.

(a) The General Counsel shall conduct a review of the legal sufficiency of the contract action. The General Counsel shall provide to the contracting officer a written determination of whether the proposed action is legally sufficient, or the details of any insufficiency and a recommended course of action to overcome the insufficiency. A contracting officer shall not take action which is contrary to a written and timely determination of legal insufficiency from the General Counsel.

(b) The General Counsel shall complete the legal review as quickly as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing the action.

PART 3502—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c); Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

Subpart 3502.1—Definitions

3502.101 Definitions.

Administrator means the chief executive officer of the Panama Canal Commission. The Administrator, subject to the direction and under the supervision of the Board of Directors, exercises general and active control over the Commission's offices, business and operations, and general supervision over its officials, agents, attorneys, and employees. As contemplated at FAR 2.101, unless otherwise indicated, ''Administrator'' also means the Commission's Deputy Administrator.

Agency head means the Administrator of the Panama Canal Commission.

Bureau Director means an official appointed by the Administrator to direct and manage one of the Commission's three operating bureaus.

Commission means the Panama Canal Commission.

Designated Agency Ethics Official means an individual appointed by the Administrator pursuant to the ''Ethics in Government Act of 1978'' to coordinate and manage the agency's ethics program and to act as the principal contact with the Office of Government Ethics.

Designated contractors (sometimes referred to as ''special regime contractors'') means:

(a)(1) Natural persons who are nationals or permanent residents of the United States, or

(2) Corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of such natural persons—

(i) To whom contracts are awarded by the Panama Canal Commission for work to be performed in whole or in part in the Republic of Panama, and

(ii) Who are so designated in writing by the Commission.

(b) The term also includes subcontractors of designated contractors (1) who are nationals or permanent residents of the United States, or (2) which are corporations or other legal entities organized under the laws of the

United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

Head of Independent Unit means an official appointed by the Administrator to direct and manage one of the Administrator's staff offices.

Head of the Contracting Activity (HCA) means the General Services Director and the Engineering and Construction Director.

Implementing Agreement means the Agreement in Implementation of Article III of the Panama Canal Treaty (TIAS 10031), signed at Washington, DC on September 7, 1977.

Inspector General means the Office of the Inspector General.

Procurement Executive means an individual designated as the senior procurement executive pursuant to 41 U.S.C. 414(3), by the Administrator from members of his staff. The Procurement Executive is delegated agency-wide responsibility to oversee development of procurement systems, establish procurement policy, evaluate procurement system performance in accordance with approved criteria, carry out specific responsibilities as assigned in this PAR, enhance career management of the procurement work force, and certify to the Administrator that procurement systems meet approved criteria.

Treaty means the Panama Canal Treaty (TIAS 10030), signed at Washington, DC on September 7, 1977.

[55 FR 7638, Mar. 2, 1990]

PART 3503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

3503.000 Scope of part.

Subpart 3503.1—Safeguards

3503.101 Standards of conduct.
3503.101–3 Agency regulations.
3503.103 Independent pricing.
3503.103–2 Evaluating the certification.

Subpart 3503.2—Contractor Gratuities to Government Personnel

3503.203 Reporting suspected violations of the Gratuities clause.
3503.204 Treatment of violations.

Subpart 3503.3—Reports of Suspected Antitrust Violations

3503.301 General.

Subpart 3503.4—Contingent Fees

3503.408 Evaluation of the SF 119.
3503.408–1 Responsibilities.
3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3503.5—Other Improper Business Practices

3503.502 Subcontractor kickbacks.
3503.502–2 General.

Subpart 3503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3503.600–70 Scope of subpart.
3503.600–71 Definitions.
3503.601 Policy.
3503.602 Exceptions.
3503.603 Responsibilities of the contracting officer.
3503.670 Exclusions.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7638, Mar. 2, 1990, unless otherwise noted.

3503.000 Scope of part.

This part implements FAR part 3, cites Commission regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 3503.1—Safeguards

3503.101 Standards of conduct.

3503.101–3 Agency regulations.

Commission regulations on Employee Responsibilities and Conduct are contained in the Commission's ''Employee Code of Conduct''. All personnel involved in acquisition actions shall become familiar with the statutory and

regulatory prohibitions governing employee conduct. Any problems or questions concerning standards of conduct shall be referred to the Designated Agency Ethics Official.

3503.103 Independent pricing.

3503.103–2 Evaluating the certification.

(b)(3) Whenever an offer is rejected under FAR 3.103–2, or the Certificate of Independent Price Determination is suspected of being false, the contracting officer shall report the situation to the General Counsel through the cognizant Head of the Contracting Activity for referral to the Attorney General in accordance with FAR 3.303.

Subpart 3503.2—Contractor Gratuities to Government Personnel

3503.203 Reporting suspected violations of the Gratuities clause.

Any Commission employee who suspects that a violation of the Gratuities clause has occurred shall immediately report the suspected violation to the cognizant Head of the Contracting Activity. Upon being notified of the suspected violation, the HCA shall inform the Designated Agency Ethics Official and the Procurement Executive, by written memorandum, of the pertinent details of the suspected violation.

3503.204 Treatment of violations.

(b) When the HCA determines that there is probable cause to believe that a violation of the Gratuities clause has been committed, the case shall be handled as provided in the Commission debarment and suspension procedures in subpart 3509.4.

(c) The final decision as to which remedies the Commission may pursue if a violation of the Gratuities clause is found by the Debarment Committee (see 3509.406–3(b)), is reserved to the Administrator.

Subpart 3503.3—Reports of Suspected Antitrust Violations

3503.301 General.

(b) The contracting officer shall report any suspected violations of antitrust laws to the General Counsel through the cognizant Head of the Contracting Activity for referral to the Attorney General and the Commission's Debarment Committee in accordance with FAR subpart 3.3.

Subpart 3503.4—Contingent Fees

3503.408 Evaluation of the SF 119.

3503.408–1 Responsibilities.

(b) The contracting officer's documentation of the evaluation of the Standard Form 119, Statement of Contingent or Other Fees, conclusions, and any proposed actions shall be reviewed by the cognizant Head of the Contracting Activity in coordination with the General Counsel.

3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Commission personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentations, or violations of the Covenant Against Contingent Fees shall report the matter promptly to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity.

Subpart 3503.5—Other Improper Business Practices

3503.502 Subcontractor kickbacks.

3503.502–2 General.

Any Commission employee who suspects that a violation of the Anti-Kickback Act has occurred shall immediately report the suspected violation to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity. Suspected violations shall be treated in accordance with the debarment and suspension procedures at subpart 3509.4.

Subpart 3503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3503.600–70 Scope of subpart.

This subpart implements and supplements FAR subpart 3.6 and sets forth

Commission policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former Commission employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government.

3503.600–71 Definitions.

Commission employee means:

(a) Any officer or employee of the Panama Canal Commission who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, or

(b) Any officer or employee of the Commission who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days and who actually served more than 60 days during such 365-day period.

3503.601 Policy.

Except as authorized at 3503.602 or excluded at 3503.670, no contract shall be awarded without competition to a—

(a) Former Commission employee (or to a business concern or other organization owned or substantially owned or controlled by a former Commission employee) whose employment terminated within 365 calendar days before submission of an offer to the Commission; or

(b) Prospective contractor which employs, or proposes to employ, a current Commission employee or a former Commission employee whose employment terminated within 365 calendar days before submission of an offer to the Commission, if either of the following conditions exist:

(1) The current or former Commission employee is or was involved in developing or negotiating the offer for the prospective contractor.

(2) The current or former Commission employee will be involved directly or indirectly in the management, administration, or performance of the contract.

3503.602 Exceptions.

(a) The Director, Office of Executive Administration in his capacity as the Designated Agency Ethics Official may authorize an exception, in writing, to the policy in FAR 3.601 and 3503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, section 27 of the Office of Federal Procurement Policy Act, or Commission regulations in the ''Employee Code of Conduct''. The Director, Office of Executive Administration shall consult with the cognizant Bureau or Staff Director who originated the request and with the General Counsel before authorizing any exceptions.

(b) This subpart does not apply to subcontracts, that is, agreements to undertake part of the work as an independent contractor. However, where subcontracts essentially create an ''employer-employee'' relationship between the Commission and the subcontractors, the subpart shall apply. In determining whether such a relationship exists, the contracting officer shall generally be guided by the standards of Chapter 304, Subchapter 1–4 of the ''Federal Personnel Manual'' in distinguishing between employees and independent contractors.

3503.603 Responsibilities of the contracting officer.

Before awarding a contract, the contracting officer shall obtain an authorization under 3503.602 for any of the reasons stated in FAR 3.603.

3503.670 Exclusions.

Former or current Commission employees who participated personally and substantially in the conduct of any Commission procurement of supplies or services, including those who were responsible for reviewing and approving the award, modification, or extension of any contract for such procurement, are excluded from the 365 calendar day ''before submission of an offer'' time period specified in 3503.601 (a) and (b). Instead, the time period for such employees shall be two years after the last date the employee participated personally and substantially in the

conduct of any Commission procurement of supplies or services, or personally reviewed and approved the award, modification, or extension of any contract for such procurement. This two-year prohibition applies irrespective of whether the contract being sought is on a competitive or noncompetitive basis.

PART 3504—ADMINISTRATIVE MATTERS

Subpart 3504.6—Contract Reporting

Sec.
3504.602 Federal Procurement Data System.
3504.903 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3504.6—Contract Reporting

3504.602 Federal Procurement Data System.

(b) As indicated in the FPDS Reporting Manual, the Commission is exempt from the reporting requirements of the Federal Procurement Data System, except for the procurement data that is required to be provided in accordance with Public Law 96–39 (Trade Agreements Act of 1979) as prescribed by OFPP Policy Letter 80–8 (as amended).

[55 FR 7640, Mar. 2, 1990]

3504.903 Procedures.

The Commission will report the information required under FAR 4.902(b) directly to the IRS.

[55 FR 7640, Mar. 2, 1990]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 3505—PUBLICIZING CONTRACT ACTIONS

Sec.
3505.000 Scope of part.

Subpart 3505.2—Synopses of Proposed Contract Actions

3505.202 Exceptions.

Subpart 3505.5—Paid Advertisements

3505.502 Authority.
3505.503 Procedures.
3505.503–70 Authorization.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7640, Mar. 2, 1990, unless otherwise noted.

3505.000 Scope of part.

This part implements FAR part 5 and provides Commission policies and procedures for publicizing contract opportunities, and provides for an additional exception to the requirements for use of ''Commerce Business Daily'' notices.

Subpart 3505.2—Synopses of Proposed Contract Actions

3505.202 Exceptions.

(a)(13) The contract action is one for which participation in the acquisition will be limited to sources in Panama pursuant to the conditions prescribed in 3570.102(e). The Procurement Executive will monitor and maintain a record of proposed contract actions that are exempt from the notice requirements of FAR 5.201 by operation of this exception.

Subpart 3505.5—Paid Advertisements

3505.502 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the HCA or designee.

3505.503 Procedures.

(a) *General.* When there is a reasonable probability that supplies or services (including construction) are available in Panama that are comparable in quality and price to those which may be obtained from other sources, and when local advertising is reasonably practical, the contracting officer shall request authorization from the HCA or designee to advertise the procurement action within the appropriate Panamanian market. The request for authorization shall include—

(1) A description of the proposed procurement action and the supplies or services to be procured;

(2) A description of how the determination was made that the Panamanian preference may apply; and

(3) A summary of how the appropriate advertising market was identified.

3505.503–70 Authorization.

The HCA or designee shall review the request for authorization of paid advertising and, if concurring, shall grant authorization in writing to the contracting officer to proceed. The written authorization shall specify any limitations on the advertising that are deemed appropriate. The HCA shall furnish a copy of each such authorization to the Procurement Executive.

PART 3506—COMPETITION REQUIREMENTS

Sec.
3506.000 Scope of part.

Subpart 3506.3—Other Than Full and Open Competition

3506.300 Scope of subpart.
3506.302–4 International agreement.
3506.303 Justifications.
3506.303–1 Requirements.
3506.303–2 Content.
3506.304 Approval of the justification.
3506.304–70 Class justifications.

Subpart 3506.5—Competition Advocate

3506.501 Requirement.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7640, Mar. 2, 1990, unless otherwise noted.

3506.000 Scope of part.

This part implements FAR part 6 and prescribes Commission policies and procedures related to competition requirements.

Subpart 3506.3—Other Than Full and Open Competition

3506.300 Scope of subpart.

This subpart provides guidance on:

(a) The application of the Panama Canal Treaty of 1977 between the United States and Panama as an exemption to the requirement for full and open competition, and

(b) The preparation and approval of individual and class Justifications for Other Than Full and Open Competition (JOFOC's).

3506.302–4 International agreement.

(a) *Authority*. Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 establishes that the Commission shall give preference to Panamanian supplies and services in its procurement activities. Such preference is understood to mean that if supplies or services (including construction) of comparable quality and price are available when required and can be obtained from sources both within and without the Republic of Panama, preference shall be afforded to those sources within the Republic of Panama to the maximum extent possible. When choosing between goods from sources within the Republic of Panama, preference shall be given to those with a larger percentage of components of Panamanian origin. This is not intended to require the purchase of Panamanian supplies and services, as defined herein, where superior quality or lower prices are available from other sources. Part 3570 sets forth specific guidance and policy with respect to the Commission's implementation of Article IX.

(c) *Limitations.* Solicitations above the small purchase limitation that are intended for exclusive acquisition from sources in Panama shall be supported by a class or individual determination and findings as required by 3570.102(e).

3506.303 Justifications.

3506.303–1 Requirements.

(c) The scope of the actual procurement shall not exceed the scope of the proposed procurement cited in the JOFOC. If a change to the contract exceeds this limitation, the contract change shall not be consummated until an amended JOFOC has been approved.

(d) When contract actions are subject to the Agreement on Government Procurement and the authority of FAR 6.302–3(a)(2)(i) or 6.302–7 is being cited as the basis for not providing full and open competition, a copy of the justification shall be forwarded to the Procurement Executive as the point of contact with the Office of the United States Trade Representative.

3506.303–2 Content.

In addition to the requirements of FAR 6.303–2, the justification shall include—

(a) The type of contract;

(b) A statement of delivery requirements;

(c) The total estimated dollar value, including options, for the acquisitions covered by the justification; and

(d) A copy of the approved Acquisition Plan when the acquisitions meet the criteria for a written Acquisition Plan under subpart 3507.1.

3506.304 Approval of the justification.

(a) Except as noted at FAR 6.304(b), the approval of a justification for other than full and open competition shall be in writing and at the levels given below—

(1) For a proposed contract not exceeding $100,000, the HCA is the approval authority. This approval is not required when the contract is one of those cited in FAR 6.304(a)(1) (i) through (iv).

(2) For a proposed contract over $100,000, but not exceeding $1,000,000, the Competition Advocate is the approval authority.

(3) For a proposed contract over $1,000,000, but not exceeding $5,000,000,

the Procurement Executive is the approval authority.

(4) For a proposed contract over $5,000,000, the Administrator is the approval authority.

(b) Contracting officers shall consult with the Competition Advocate prior to submitting any justification for approval pursuant to paragraph (a) of this section.

3506.304–70 Class justifications.

(a) Class justifications shall be approved in the same manner as individual justifications. To determine the approval level for a class justification, the aggregate estimated dollar value of all actions contemplated for one year shall be used to establish the appropriate dollar threshold for approval.

(b) The following are examples of appropriate class justifications:

(1) A basic ordering agreement (BOA) including all orders to be issued under the BOA for the term of the BOA;

(2) Contracts to be awarded to more than one contractor to provide Government-furnished property for assembly into an end item, in which case the circumstances of the class justification must justify all the contracts proposed under the justification.

(c) Requests for approval at any level must be submitted to the approval authority before release of the solicitation. The solicitation shall not be released until the justification is approved in writing (but see FAR 6.303–1(e)).

(d) The Procurement Executive shall maintain a list of products, materials, and services that have been granted a class justification for exclusive acquisition from sources in Panama (see 3506.302–4(c)).

Subpart 3506.5—Competition Advocate

3506.501 Requirement.

The Administrator shall designate in writing one Competition Advocate who shall serve as the agency and procuring activities competition advocate for all Commission acquisitions.

PART 3507—ACQUISITION PLANNING

Subpart 3507.1—Acquisition Plans

Sec.
3507.103 Agency-head responsibilities.

Subpart 3507.3—Contractor Versus Government Performance

3507.301 Policy.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3507.1—Acquisition Plans

3507.103 Agency-head responsibilities.

(c)(1) Formal acquisition planning provided at FAR subpart 7.1 is primarily designed for complex and costly acquisitions. However, the disciplines of the prescribed planning process are useful to all acquisitions, even if on a less formal basis.

(2) Written acquisition plans shall be prepared for—

(i) All development (see FAR 35.001) acquisitions whose estimated contractual cost is $1,000,000 or more annually;

(ii) Supply, service, and construction acquisitions whose estimated contractual cost is $3,000,000 or more for any fiscal year. Excluded are repetitive requirements-type and fuel contracts.

(d) The Acquisition Plan (AP) shall include all subsystems, Government-furnished property, major component contractual actions, and all other contracts which have a significant effect on the total program.

(f) The planner for acquisitions requiring a formal, written plan shall be the program manager or other official having overall responsibility for the program concerned.

(g)(1) The planner shall obtain the written concurrence of the appropriate contracting officer for each acquisition plan.

(2) The Head of the Contracting Activity shall review and approve the acquisition plan and ensure that (i) the objectives of the AP are realistic and achievable, and (ii) solicitations and contracts are appropriately structured to equitably distribute the technical, financial, and business risks, considering the phase of the acquisition, the

technical requirements, and business and legal constraints.

(3) Acquisition plans shall be furnished by the cognizant HCA to the Procurement Executive.

(j) When a need is urgent enough to require an unusually compressed delivery or performance schedule, and the preparation of a detailed written AP would interfere with the successful meeting of that schedule, the Procurement Executive may waive appropriate requirements of FAR subpart 7.1 and this subpart 3507.1. The waiver shall be in writing and shall specifically designate those requirements that are waived.

[55 FR 7641, Mar. 2, 1990]

Subpart 3507.3—Contractor Versus Government Performance

3507.301 Policy.

(a) For the purposes of OMB Circular No. A–76, a commercial source is defined as ''a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service.'' Accordingly, by virtue of the Commission's location in the Republic of Panama, FAR subpart 7.3 is not applicable to the Panama Canal Commission because commercial services would have to be contracted out to sources located in Panama. Commission policy regarding commercial services to be contracted out to sources in Panama is set forth in paragraph (b) of this section.

(b) Commercial work and services shall be contracted out when there are available reliable local contractors and the expected cost is beneficial to the Commission. However, when commercial work/service to be done requires skills that the Commission should have and/or develop, then a careful evaluation shall be made before such work/service is contracted outside the agency. The cognizant Head of the Contracting Activity shall be the approving official for commercial work and services to be contracted out pursuant to this policy.

[55 FR 7641, Mar. 2, 1990]

PART 3508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
3508.001 Priorities for use of Government supply sources.

Subpart 3508.4—Ordering from Federal Supply Schedules

3508.404 Using schedules.
3508.404–1 Mandatory use.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7642, Mar. 2, 1990, unless otherwise noted.

3508.001 Priorities for use of Government supply sources.

(a) Under Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, the Panama Canal Commission is required under certain conditions to give preference, to the maximum extent possible, to procuring supplies and services obtainable in Panama (see 3506.302–4(a), subpart 3525.8, and part 3570). Therefore, when supplies or services are to be procured from sources in Panama under the preference requirement of Article IX, the mandatory use of sources for a like item of supply or service, as required by FAR part 8, shall not be applicable.

Subpart 3508.4—Ordering from Federal Supply Schedules

3508.404 Using schedules.

3508.404–1 Mandatory use.

When supplies or services are procured from sources in Panama under the preference requirement of Article IX, as stated in 3508.001(a), the mandatory use of a Federal Supply Schedule for a like item of supply or service shall not be applicable. When a procurement is not made under the Panamanian preference of Article IX, and delivery or performance is to be made in Panama, the mandatory supply schedule should be carefully evaluated for the following exceptions to mandatory use:

(d) *Geographic coverage.* Each Federal Supply Schedule delineates the specific

geographic area for which it is mandatory for use. The geographic area applies to the location where final delivery of the supplies is to be made, or the service to be performed, and not to the location of the ordering office. In most cases, the Republic of Panama will not be within the geographic limitations of the schedule and mandatory use will not be applicable. The mandatory use provisions of FAR 8.4 and 41 CFR 101–26.4 are applicable to Commission offices located in the United States when ordering supplies or services to be delivered or performed in the United States for their own use.

(e) *Lower prices for identical items.* The Commission may purchase products from any source pursuant to the conditions set forth in FAR 8.404–1(e).

PART 3509—CONTRACTOR QUALIFICATIONS

Sec.

3509.000 Scope of part.

Subpart 3509.1—Responsible Prospective Contractors

3509.104–3 Application of standards.
3509.106 Preaward surveys.
3509.106–70 Professional type services preaward surveys.

Subpart 3509.2—Qualification Requirements

3509.202 Policy.
3509.206 Acquisitions subject to qualification requirements.
3509.206–1 General.

Subpart 3509.4—Debarment, Suspension and Ineligibility

3509.400 Scope of subpart.
3509.403 Definitions.
3509.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
3509.405 Effect of listing.
3509.405–1 Continuation of current contracts.
3509.405–2 Restrictions on subcontracting.
3509.406 Debarment.
3509.406–1 General.
3509.406–2 Causes for debarment.
3509.406–3 Procedures.
3509.406–70 Settlement.
3509.406–71 Voluntary exclusion.
3509.407 Suspension.
3509.407–2 Causes for suspension.
3509.407–3 Procedures.
3509.407–70 Settlement.
3509.407–71 Voluntary exclusion.
3509.470 Special notice.
3509.471 Equal application.

Subpart 3509.5—Organizational Conflicts of Interest

3509.500 Scope of subpart.
3509.502 Applicability.
3509.503 Waiver.
3509.504 Contracting officer responsibilities.
3509.506 Information sources.
3509.507 Procedures.
3509.508 Solicitation provision and contract clause.
3509.508–1 Solicitation provision.
3509.508–2 Contract clause.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7642, Mar. 2, 1990, unless otherwise noted.

3509.000 Scope of part.

This part implements FAR part 9 and provides Commission policy and procedures pertaining to: contractor's responsibility; debarment, suspension, and ineligibility; qualified products; and organizational conflicts of interest.

Subpart 3509.1—Responsible Prospective Contractors

3509.104–3 Application of standards.

(c) *Satisfactory performance record.* If the contracting officer invokes the presumption of nonresponsibility required by FAR 9.104–3(c), the contracting officer shall give notice, together with the reasons for invoking the presumption, to the Procurement Executive.

3509.106 Preaward surveys.

3509.106–70 Professional type services preaward surveys.

(a) Generally, preaward surveys are not performed for acquisition of professional type services such as those provided by medical doctors, lawyers or other licensed and/or regulated professions.

(b) To assist in making a determination of responsibility for professional type services, the types of information listed below shall be obtained from the offeror when applicable:

(1) Organizational structure and plan contemplated to accomplish the service;

(2) Summary of experience in performing the same or similar service;

(3) Resumes of key personnel with particular emphasis on academic accomplishments pertinent to the service to be performed;

(4) Evidence of professional liability insurance, or evidence such insurance can be obtained;

(5) Membership in professional organizations;

(6) Information on pertinent state and local licenses; and

(7) Information on the firm or key individuals that reflect their status or professional recognition in their field of endeavor, such as awards and published articles in professional journals or magazines.

(c) When the statement of work includes a review of credentials by the requiring activity, this review should be considered a part of the preaward survey, and other information requested from the offeror should be minimized.

Subpart 3509.2—Qualification Requirements

3509.202 Policy.

(a)(1) The contracting officer shall ensure that the written justification required by FAR 9.202(a)(1) is prepared prior to establishing a requirement for testing or other quality assurance demonstration that must be completed by an offeror before the offeror is awarded a contract.

3509.206 Acquisitions subject to qualification requirements.

3509.206–1 General.

(b) The contracting officer is designated to make the determination required by FAR 9.206–1(b).

Subpart 3509.4—Debarment, Suspension and Ineligibility

SOURCE: 61 FR 3846, Feb. 2, 1996, unless otherwise noted.

3509.400 Scope of subpart.

This subpart supplements, and shall be applied in conformity with, FAR subpart 9.4.

3509.403 Definitions.

Debarring official means the Administrator of the Panama Canal Commission (hereinafter ''Commission''). In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed debarment due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the debarring official.

Fact-finding official means a person not employed by the Commission or any agency of the U.S. Government retained at Commission expense to conduct fact-finding under this subpart. The individual must have no prior knowledge of the particular subject matter and no conflict of interest with respect to any of the parties involved in the debarment or suspension action. He shall have knowledge of the laws and regulations governing the federal procurement system, and shall have experience in receiving evidence and formulating findings of fact.

Suspending official means the Commission Administrator. In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed suspension due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the suspending official.

3509.404 List of parties excluded from Federal procurement and nonprocurement programs.

(c) The Commission Procurement Executive (hereinafter ''PE'') shall perform the actions required by FAR 9.404(c).

3509.405 Effect of listing.

The PE is the designee of the agency head for the purposes of FAR 9.405(a) and (d)(2) and (3) and may, upon the written recommendation of the pertinent Head of the Contracting Activity (hereinafter ''HCA''), make the determinations referenced therein.

3509.405–1 Continuation of current contracts.

The PE is the designee of the agency head for the purposes of FAR 9.405–1(a) and (c) and may, upon the written recommendation of the pertinent HCA, take the actions referenced therein.

3509.405–2 Restrictions on subcontracting.

(a) The PE is the designee of the agency head for the purposes of FAR 9.405–2(a) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406 Debarment.

3509.406–1 General.

(c) The PE is the designee of the agency head for the purposes of FAR 9.406–1(c) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406–2 Causes for debarment.

In addition to the causes listed in FAR 9.406–2, the use of a Panama Canal Commission employee or a member of the Commission's Board of Directors as an agent or advocate for a Commission contractor, or prospective contractor, shall be a cause for debarment.

3509.406–3 Procedures.

(a) *Investigation and referral.*

(1)(i) Any Commission official or employee who suspects or has knowledge of any conduct, statement, act, or omission of, or attributable to, a Commission contractor or a potential Commission contractor which could justify debarment under FAR subpart 9.4 or this subpart shall immediately report this information to the Commission General Counsel (hereinafter ''GC'') or to the appropriate contracting officer.

(ii) Any Commission official or employee who suspects or has knowledge that a debarred individual or company has reestablished itself under a new name shall immediately report this information to the GC or to the appropriate contracting officer.

(2) When the GC receives such information he shall refer the matter to the appropriate contracting officer for investigation and shall notify the PE and the pertinent HCA. When the contracting officer receives such information he shall notify the PE and the pertinent HCA.

(3) The contracting officer shall, in coordination with the pertinent HCA, promptly investigate the matter, assemble all relevant information and prepare a written report containing all available evidentiary material, including copies of indictments and conviction notices when applicable, and the names of the owners and officers, as well as any affiliates, of the contractor in question. The written report shall include a recommendation whether a debarment action should be commenced and, if so, shall identify the causes for debarment, see FAR 9.406–2 and 3509.406–2 of this subpart, and identify each company and individual, including divisions of companies and affiliates, which the contracting officer recommends should be specifically named in the action.

(4) The contracting officer shall submit his report to the pertinent HCA and a copy thereof to the PE and the GC. The HCA shall study the report and promptly advise the PE, in writing, whether or not he concurs in the contracting officer's recommendation and shall explain the reasons for his concurrence or nonconcurrence.

(5) The PE shall study the contracting officer's report and the recommendation of the HCA. If the HCA and the PE agree that a debarment action should not be commenced, the PE shall so inform the debarring official and shall prepare a memorandum for record describing and closing the matter. If, however, either the HCA or the PE recommend that a debarment action should be commenced, the PE shall forward the contracting officer's report to the debarring official, together with the recommendation of the HCA as well as the PE's own written recommendation.

(b) *Decisionmaking process.*

(1) If the debarring official, after reviewing the contracting officer's report and the recommendations of the HCA and the PE, considering fully the provisions of FAR 9.402 and 9.406–1(a), and consulting with the GC, determines there is a reasonable basis to commence a debarment action, the debarring official shall instruct the PE to

sign and send to each specifically named company, individual or affiliate to which the action is to apply, via certified mail, return receipt requested, either:

(i) An informal notice of the Commission's intention to propose debarment, *see* 3509.406–3(b)(2) of this subpart; or

(ii) A formal notice of the Commission's proposal to debar under FAR 9.406–3(c).

(2) An informal notice of the Commission's intention to propose debarment shall advise the addressee, in writing, of the following:

(i) The issuance under FAR 9.406–3(c) of a formal notice of proposal to debar the addressee is seriously being considered by the Commission;

(ii) The basic factual reasons for the contemplated debarment;

(iii) The causes relied upon under FAR 9.406–2 and 3509.406–2 of this subpart;

(iv) The Commission's procedures governing the debarment process;

(v) The addressee's right to reply to the PE in writing within 21 calendar days of receipt of the informal notice, and show cause why the Commission should not issue, to the addressee, a formal notice of proposal to debar under FAR 9.406–3(c) for the reasons and causes cited by the Commission;

(vi) That, if the PE does not receive a reply from the addressee to the informal notice within 21 calendar days of the addressee's receipt of the informal notice, the Commission will issue to the addressee a formal notice of proposal to debar;

(vii) The effect of the issuance of a formal notice of proposal to debar;

(viii) The potential effect of an actual debarment; and

(ix) That, while the Commission will carefully consider the content of a timely reply to the informal notice, the Commission reserves the right to issue a formal notice of proposal to debar without additional discussion or correspondence.

(3) The PE shall study the timely reply of an addressee to an informal notice and shall forward the reply to the GC and the debarring official with the PE's evaluation and recommendation.

(4) If, after reviewing a timely reply to an informal notice, as well as the views of the PE and the GC, the debarring official determines, considering fully the provisions of FAR 9.402 and 9.406–1(a), that a formal debarment action should commence, the debarring official shall instruct the PE to sign and send a formal notice of proposal to debar to the addressee.

(c) *Notice of proposal to debar.* In addition to the matters listed at FAR 9.406–3(c), a formal notice of proposal to debar shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the proposed debarment.

(d) *Debarring official's decision.*

(1) A submission in opposition to the Commission's formal notice of proposal to debar presented by a contractor, or any named individual or affiliate, shall include information and argument in opposition to the proposed debarment, including any additional specific information or documents that raise a genuine dispute over material facts. The submission shall be addressed to the PE.

(2) If a timely submission in opposition to a formal notice of proposal to debar is not presented by a named contractor, individual or affiliate to whom a formal notice was sent, the PE shall, with respect only to each such contractor, individual or affiliate that failed to present a timely submission, study all the information in the administrative record and shall forward the entire record to the debarring official with an evaluation and recommendation whether to debar the nonresponding contractor, individual or affiliate and, if so, for what period of time.

(3) If a timely submission in opposition to a formal notice of proposal to debar is submitted in actions based upon a conviction or civil judgment, the PE shall evaluate all the information in the administrative record, including the submission in opposition, and shall forward these materials to the debarring official with a recommendation whether to debar and, if so, for what period of time.

(4)(i) If a timely submission in opposition to a formal notice of proposal to debar is presented in actions not based

upon a conviction or civil judgment, the PE shall evaluate the formal notice of proposal to debar and the submission in opposition and shall determine, with the advice of the GC, if the submission raises a genuine dispute over any facts material to the proposed debarment. If it does not, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(ii) If, however, the PE determines, in consultation with the GC, that a timely submission in opposition to a formal notice of proposal to debar in actions not based upon a conviction or civil judgment raises a genuine dispute over any fact material to the proposed debarment, the PE shall so advise the contractor, named individual or affiliate, and shall inquire whether a fact-finding hearing is desired. If a fact-finding hearing is not requested by the contractor, named individual or affiliate, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(iii) If a fact-finding hearing is requested, the PE shall appoint a fact-finding official to whom all matters involving disputed material facts shall be referred. The PE will provide the fact-finding official with a copy of the entire administrative record including the submission in opposition. The fact-finding official shall study the Commission's notice(s) of proposal to debar and the submission(s) in opposition, and shall identify specifically the material facts in genuine dispute and so advise the pertinent contractor, named individual or affiliate, as well as the Commission's designated advocate in the Office of General Counsel. A fact-finding hearing shall be scheduled and conducted by the fact-finding official, and shall take place in a Commission facility in Panama unless the fact-finding official determines that fundamental fairness compels the use of another location. The rules governing the fact-finding hearing shall be established by the fact-finding official but shall conform fully with FAR 9.406–3(b)(2) and (d)(2) and (3).

(5) The fact-finding official shall present written findings of fact and the transcribed record of the hearing, if made, to the debarring official within 21 calendar days from his receipt of the transcript or from the final day of the hearing if no transcript is ordered. The findings shall resolve each material fact previously determined to be in genuine dispute based on a preponderance of the evidence presented.

(6) Upon receiving the complete administrative record and the evaluation and recommendation of the PE or, if there was a fact-finding hearing, upon receiving the hearing record and the findings of fact of the fact-finding official and the evaluation and recommendation of the PE, the debarring official shall, considering fully the provisions of FAR 9.402 and 9.406–1(a), make a final decision whether to impose debarment. If debarment is chosen, the debarring official shall also determine the period of debarment.

(e) *Notice of debarring official's decision.* The debarring official shall promptly notify the contractor and any named individual or affiliate of the final decision in writing by certified mail, return receipt requested.

3509.406–70 Settlement.

(a) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to perform, accomplish or implement such remedial measures or mitigating factors as are listed at FAR 9.406–1(a). The contractor, individual or affiliate shall also agree that its failure to observe any term or condition of the agreement shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a settlement agreement if the proposed debarment is based on a

conviction of or civil judgment for any of the causes in FAR 9.406–2(a).

3509.406–71 Voluntary exclusion.

(a)(1) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to voluntarily refrain, for a specified period of time, from attempting to obtain, and from entering into, any contract, purchase agreement or other form of contractual relationship, regardless of dollar amount, with, as the debarring official may determine, either: (i) the Commission; or (ii) the Commission and one or more, or all, other agencies, departments or entities of the U.S. Government.

(2) A voluntary exclusion will not be reported to the GSA nor appear in the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' and if the contractor, individual or affiliate is currently listed due to a Commission notice of proposal to debar the PE will advise the GSA of the voluntary exclusion and request the immediate cessation of the listing. The contractor, individual or affiliate shall agree that its failure to observe any term or condition of the voluntary exclusion shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a voluntary exclusion agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406–2(a).

3509.407 Suspension.

3509.407–2 Causes for suspension.

In addition to the causes listed in FAR 9.407–2, the cause for debarment identified in 48 CFR (PAR) 3509.406–2 also applies to suspension actions.

3509.407–3 Procedures.

(a) The procedures set forth in 48 CFR (PAR) 3509.406–3 for debarment also apply, insofar as they are compatible with the procedures set forth in FAR 9.407–3, to suspension actions except those procedures identified in paragraph (b) of this subsection.

(b) The following procedures in 48 CFR (PAR) 3509.406–3 do *not* apply to suspension actions: 3509.406–3(b)(1)(i), 3509.406–3(b) (2) through (4) and 3509.406–3(c).

(c) *Notice of suspension*. In addition to the matters listed at FAR 9.407–3(c), in actions not based on an indictment, a notice of suspension shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the suspension.

3509.407–70 Settlement.

Where a suspension is being considered, the suspending official may enter into a settlement agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406–70.

3509.407–71 Voluntary exclusion.

Where a suspension is being considered, the suspending official may enter into a voluntary exclusion agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406–71.

3509.470 Special notice.

The Commander in Chief, United States Southern Command, shall be notified by the Procurement Executive of the issuance of any Commission notice of proposal to debar and of any debarment or suspension decision made by the debarring or suspending official.

3509.471 Equal application.

These procedures for debarment and suspension apply equally to all firms, individuals and affiliates doing business with the Panama Canal Commission regardless of their nationality, residence or location.

Subpart 3509.5—Organizational Conflicts of Interest

3509.500 Scope of subpart.

This subpart establishes Commission policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. It is the Commission's policy to avoid, neutralize, or mitigate organizational conflicts of interest. If the Commission is unable to neutralize or mitigate the effects of a potential conflict of interest, it will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

3509.502 Applicability.

This subpart applies to all Commission contracts except agreements with other Federal agencies.

3509.503 Waiver.

The Commission's General Counsel is designated as the authority to waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Commission's interest. Any request for waiver must be in accordance with FAR 9.503.

3509.504 Contracting officer responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by the contracting officer's own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Commission. In that case, the contracting officer may, with the approval of the cognizant Head of the Contracting Activity, set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible.

(d) The contracting officer shall, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract, including disclosure of such conflicts of interest with respect to proposed subcontractors.

3509.506 Information sources.

(a) *Disclosure.* At the request of the contracting officer, prospective Commission contractors responding to solicitations or submitting unsolicited proposals shall provide information to the contracting officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraphs (a)(1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, the contractor shall so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations requesting the

information in paragraph (a) of this section, the Commission will consider any inadvertent failure to provide disclosure certification as a ''minor informality'' (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception*. When the contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

3509.507 Procedures.

(a) The contracting officer shall document in writing the resolution of any potential or actual conflicts of interest identified. This documentation shall be reviewed and approved by the General Counsel prior to award. If the organizational conflict of interest cannot be resolved, the contracting officer shall disqualify the prospective contractor from receiving the contract award.

(b) The General Counsel shall review and make the final decision required at FAR 9.507(c)(4) on any contractor request for higher review of the contracting officer's decision.

3509.508 Solicitation provision and contract clause.

3509.508–1 Solicitation provision.

The contracting officer shall insert the provision at 3552.209–70, Organizational Conflict of Interest Certification/Disclosure in solicitations that in the contracting officer's judgment may be susceptible to organizational conflicts of interest.

3509.508–2 Contract clause.

The contracting officer shall insert the clause at 3552.209–71, Organizational Conflict of Interest, in solicitations and contracts that will include the provision at 3552.209–70, Organizational Conflict of Interest Certification/Disclosure.

PART 3510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

3510.001 Definitions.
3510.004 Selecting specifications or descriptions for use.
3510.004–70 Brand name or equal purchase descriptions.
3510.007 Deviations.
3510.011 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7644, Mar. 2, 1990, unless otherwise noted.

3510.001 Definitions.

Salient characteristics mean those particular characteristics that specifically describe the essential physical and/or functional features of a brand name product. They are those essential physical and/or functional features which are identified in the specifications as a mandatory requirement which a proposed ''equal'' product must possess in order for the product to be considered responsive. The term excludes those physical and/or functional features of a brand name product that:

(a) Are not essential to the needs of the Commission, or

(b) Do not affect the suitability of the product for its intended use.

3510.004 Selecting specifications or descriptions for use.

3510.004–70 Brand name or equal purchase descriptions.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words ''or equal'' may be used only under the conditions indicated in FAR 10.004(b)(2) and (3) and shall be in accordance with this subsection. The office initiating the ''brand name or equal'' purchase request is responsible for documenting to the contracting officer's satisfaction that the conditions for its use are valid. Where feasible, all known acceptable brand name products should be referenced.

(b) The words ''or equal'' should not be added when the contracting officer has determined, with the concurrence of the General Counsel and the signed approval of the cognizant HCA, that only a particular product meets the essential requirements of the Commission.

(c) Brand name or equal purchase descriptions shall include, in addition to those characteristics set forth in FAR

10.004(b)(1) to the extent they are applicable, the following type of information to clearly identify the specific item named by brand(s) and its salient characteristics:

(1) Complete common generic identification of the item required;

(2) Applicable model, make, or catalog number for each brand name product referenced, and identity, if applicable, of the commercial catalog in which it appears;

(3) Name of manufacturer, producer, or distributor of each brand name product reference (and address if company is not well known); and

(4) All salient characteristics of the brand name product or products which have been determined by the initiating office, with the concurrence of the contracting officer, to be essential to meet the Commission's minimum physical and/or functional requirements. The purchase description shall state or otherwise indicate that the salient characteristics are mandatory features which proposed equal products must possess in order to be considered responsive.

(d) Except as provided in paragraph (e) of this subsection, when a brand name or equal purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation schedule for completion by the offeror:

To be completed by offeror:
Manufacturer's Name: _____
Manufacturer's Address: _____
Brand Name of Product (if any): _____

NOTE: Offerors are cautioned and advised to read provision 3552.210–70, Brand Name Products or Equal, located elsewhere in this solicitation, prior to completing the above. As indicated therein, offerors proposing to furnish an ''equal'' product must furnish all descriptive material necessary to determine the acceptability of such product.

(e) Where component parts of an end item are described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 3552.210–70 to such component parts would be impracticable, the requirements of paragraph (d) of this subsection and 3510.011(h) shall not apply with respect to such component parts. However, if the provision is included in the solicitation for other reasons, there shall also be included in the solicitation a statement to identify either the component parts (described by brand name or equal purchase descriptions) to which the provision applies or those to which it does not apply. Depending upon whether the former or latter alternative is used, the statement should be substantially as follows:

The provision 3552.210–70, Brand Name Products or Equal, located elsewhere in this solicitation, applies to the following component parts: (List the component parts to which the provision applies.)

or

The provision 3552.210–70, Brand Name Products or Equal, located elsewhere in this solicitation, does not apply to the following component parts: (List the component parts to which the provision does not apply.)

This paragraph (e) also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of the end item.

(f) When considered appropriate by the contracting officer, solicitations incorporating brand name or equal purchase descriptions may require the submission of offer samples in the case of offerors proposing to furnish ''equal'' products; such samples shall not be required from offerors who offer brand name products referenced in purchase descriptions.

(g) Offers proposing to furnish products other than those specifically referenced by brand name shall be considered for award when the contracting officer determines under provision 3552.210–70 that the offered products meet the salient characteristics identified in the purchase description. Offers shall not be rejected as nonresponsive for failure of the product to equal a characteristic of a brand name product if such characteristic was not specified as a salient characteristic in the brand name or equal purchase description. However, if it is clearly established that the unspecified characteristic is essential to the intended use, the solicitation is defective and no award shall be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth all salient characteristics.

(h) The brand name or equal policies and procedures in this subsection may

be used in small purchase acquisitions to the extent that they are applicable and practicable.

(i) This subsection is not applicable to construction contracts since the use of equal equipment, materials, articles, or processes are covered by FAR clause 52.236–5, Material and Workmanship.

3510.007 Deviations.

Heads of Contracting Activities are designated to authorize the deviations permitted under FAR 10.007 and are responsible for ensuring that the actions required by FAR 10.007 are accomplished.

3510.011 Solicitation provisions and contract clauses.

(h) The contracting officer shall insert the provision at 3552.210–70, Brand Name Products or Equal, in solicitations that call for the delivery of a brand name or equal product, selecting the language that is appropriate for (1) invitation for bids, or (2) requests for proposals, as parenthetically indicated in the provision. (However, see 3510.004–70(e) regarding the applicability of the provision to component parts of an end item and to accessories related to an end item.)

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 3513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.
3513.000 Scope of part.

Subpart 3513.1—General

3513.105 Small business-small purchase set-asides.
3513.107 Solicitation and evaluation of quotations.

Subpart 3513.2—Blanket Purchase Agreements

3513.201 General.
3513.203 Establishment of Blanket Purchase Agreements.
3513.203–1 General.
3513.204 Purchases under Blanket Purchase Agreements.

Subpart 3513.5—Purchase Orders

3513.505 Purchase order and related forms.
3513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
3513.505–70 Purchase requisition.
3513.505–71 Division Purchase Order.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 54 FR 7645, Mar. 2, 1990, unless otherwise noted.

3513.000 Scope of part.

This part implements and supplements FAR part 13 and provides Commission policies and procedures relating to small business-small purchase set-asides, blanket purchase agreements, and purchase order forms.

Subpart 3513.1—General

3513.105 Small business-small purchase set-asides.

(a) The requirements of Public Law 95–507 relating to setting aside acquisitions of supplies or services with an anticipated dollar value of $25,000 or less do not apply to such purchases when delivery or performance is to be made to or within the Republic of Panama. The requirements do apply to Commission offices located in the United States for the purchase of supplies or services for their own use and not for delivery or performance in Panama.

3513.107 Solicitation and evaluation of quotations.

(a) *Forms.* (4) The following Commission forms may be used by the Logistical Support Division in lieu of Standard Form 18 for requesting small purchase price quotations:

(i) *Panama Canal Form No. 1821, Request For Quotation.* This form may be used by the Purchasing and Contracts Branch for the solicitation of nonstock items and services. It must be used in conjunction with forms 7071 and 7074 (see paragraph (a)(4)(iv) of this section).

(ii) *Panama Canal Form No. 1822, Request For Quotation Continuation.* This form may be used with Panama Canal Form No. 1821 when additional space is needed.

(iii) *Panama Canal Form No. 2008, This Is A Request For Prices; It Is Not An Order.* This form may be used by the Inventory Management Branch for the solicitation of standard stock items. It must be used in conjunction with forms 7071 and 7074 (see paragraph (a)(4)(iv) of this section).

(iv) *Panama Canal Commission Form 7071, General Contract Clauses And Provisions, Small Purchases;* and *Panama Canal Commission Form 7074, Information Sheet.* These two forms shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

Subpart 3513.2—Blanket Purchase Agreements

3513.201 General.

(a) Except for the rental of construction equipment, blanket purchase agreements (BPA's) may be established only by contracting officers within the General Services Bureau. The contracting officers authorized to establish BPA's are:

(1) Chief, Inventory Management Branch for acquisition of inventory stocks;

(2) Chief, New Orleans Branch for acquisition of parts in the New Orleans area for the Motor Transportation Division and such other items as may be designated by the General Services Director;

(3) Chief, Construction Division, Engineering and Construction Bureau, for the rental of construction equipment; and

(4) Chief, Purchasing and Contracts Branch for acquisition of supplies or services not covered under paragraphs (a) (1) through (3) of this section.

[55 FR 7645, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3513.203 Establishment of Blanket Purchase Agreements.

3513.203–1 General.

(a) Blanket purchase agreements may be established for supplies or services which are readily available and for which their purchase does not require detailed technical specifications, technical inspection, or complex terms and conditions.

(b) Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA shall be permitted to request deliveries. Delivery (call) orders shall usually be made by telephone or in person. Before placing a call order against the BPA, each requirement shall be screened for availability from Commission inventory sources and from the mandatory sources of supply prescribed in FAR part 8. Necessary controls shall be maintained by the person placing the call orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA identification number shall be specified each time a delivery is requested.

(c) The procedure for establishing and using BPA's is prescribed in the Commission's Financial Systems Manual 14.020, covering BPA's in general, and 14.007, covering BPA's for automotive parts.

3513.204 Purchases under Blanket Purchase Agreements.

(a) Individual call orders under a BPA shall not exceed the dollar limitation specified in the BPA, which limitation shall not exceed the dollar limitations established by the:

(1) Engineering and Construction Director for the rental of construction equipment, and

(2) General Services Director for all other BPA's.

(b) Purchases under BPA's shall be documented on Panama Canal Form No. 3099, Request For Purchase/Call Order.

Subpart 3513.5—Purchase Orders

3513.505 Purchase order and related forms.

3513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

The following Commission order forms may be used in lieu of Optional Forms 347 and 348 for the purposes described below:

(a) *Panama Canal Form No. 1010, Purchase Order.* This form may be used by the Inventory Management Branch (1) for the small purchase acquisition of standard stock items, and (2) as a delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(b) *Panama Canal Form No. 1820, Purchase Order.* This form may be used by the Purchasing and Contracts Branch (1) for the small purchase acquisition of non-stock items and services, and (2) as a delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(c) *Panama Canal Form No. 3083, Purchase Order Continuation.* This form may be used with Panama Canal Form No. 1820 when additional space is needed.

(d) *Panama Canal Form No. 3163, Division Purchase Order.* This form may be used by all activities having contracting authority for the decentralized procurement of supplies and services (see 3513.505–71).

(e) *Panama Canal Form No. 3163–MTD, Division Purchase Order.* This form may

be used by the Motor Transportation Division and the New Orleans Branch, Logistical Support Division for purchases of nonstandard stock automotive repair parts that do not exceed dollar amounts established by the General Services Director.

3513.505–70 Purchase requisition.

Panama Canal Form No. 1821, Purchase Requisition, shall be used by requiring activities to request purchasing action by the Purchasing and Contracts Branch, Logistical Support Division. The procedure for using purchase requisitions is prescribed in the Commission's Financial Systems Manual 14.010.

3513.505–71 Division Purchase Order.

(a) *General.* The Division Purchase Order (DPO), PCC Form No. 3163, may be used by all activities that have contracting authority for the decentralized procurement of supplies and services (see 3501.601(b)). When repetitive purchases within the authorized DPO dollar limitation are made for the same supplies or services, the activity shall request the Chief, Purchasing and Contracts Branch to establish a BPA (see subpart 3513.2). A detailed procedure for the use of the DPO is prescribed in the Commission's Financial Systems Manual 14.005, covering DPO's in general, and 14.007, covering DPO's for automotive parts.

(b) *Responsibilities.* (1) Bureau directors and heads of independent units that use the DPO shall—

(i) Ensure that, whenever practicable, the functions of procurement approval, receipt documentation, and payment approval in the use of a DPO are performed by three separate persons. In no case shall the same person be permitted to perform all three functions.

(ii) Approve and sign all DPO's, subject to the conditions specified in paragraphs (b) (2)(iii) and (3) of this subsection, or appoint in writing by position or by name one or more purchasing agents to act as approval and signatory authority. Such appointees shall be at an organizational level sufficient to ensure responsible control over the obligation of funds that the DPO represents.

(2) Designated purchasing agents shall—

(i) Approve and sign DPO's within their delegated dollar authority.

(ii) Supervise the use and issuance of DPO's and verify that such use and issuance are in compliance with the FAR, this PAR, and the Commission's Financial Systems Manual.

(iii) Ensure that the following conditions exist before approving purchases to be made on DPO's:

(A) There is a valid need for the supplies or services;

(B) A unit fund controller has certified the availability of funds for the proposed purchase;

(C) The vendor is reputable and the price is reasonable; and

(D) The DPO is not being used as a means to purchase a known requirement in excess of the authorized DPO dollar limitation by fragmentizing the requirement (i.e., by breaking the total quantity of the requirement into smaller quantities that can be purchased on two or more DPO's, each of which does not exceed the authorized dollar limitation but which, collectively, will result in the purchase of the total quantity of the requirement).

(3) Individuals authorized to approve and sign DPO's shall ensure that Government funds are not expended for standard stock items, unauthorized office supplies, furnishings, appliances, or for items that are intended solely for personal convenience or to satisfy personal desires of an official or that are nonessential to the needs of the Government and do not contribute to the fulfillment of the Commission's mission.

(4) The General Services Director shall delegate authority for contracting by means of DPO's to bureau directors and heads of independent units. Such delegation shall be published from time to time in bulletin or memorandum form and shall conform to dollar limitations approved by the Administrator.

(c) *Panama Preference.* DPO purchases shall conform to the Treaty preference given to supplies and services obtainable in Panama, as prescribed in subpart 3570.1.

PART 3514—SEALED BIDDING

Sec.
3514.000 Scope of part.

Subpart 3514.2—Solicitation of Bids

3514.201–6 Solicitation provisions.
3514.205 Solicitation mailing lists.
3514.205–1 Establishment of lists.

Subpart 3514.4—Opening of Bids and Award of Contract

3514.404 Rejection of bids.
3514.404–1 Cancellation of invitations after opening.
3514.406 Mistakes in bids.
3514.406–3 Other mistakes disclosed before award.
3514.406–4 Mistakes after award.
3514.407 Award.
3514.407–1 General.
3514.407–6 Equal low bids.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7647, Mar. 2, 1990, unless otherwise noted.

3514.000 Scope of part.

This part implements and supplements FAR part 14 by providing additional solicitation provisions and additional guidance on establishment of solicitation mailing lists, cancellation of invitations after opening, mistakes in bids, and contract award.

Subpart 3514.2—Solicitation of Bids

3514.201–6 Solicitation provisions.

(a) In addition to the provisions prescribed in FAR 14.201–6, the contracting officer shall insert in all invitations for bids the provisions at—

(1) 3552.214–70, Price—Sealed Bidding; and

(2) 3552.214–73, Caution—Sealed Bidding.

(b) The contracting officer shall insert the following provisions in all invitations for bids for construction. These provisions may also be used in invitations for bids for supplies or services if the contracting officer determines that their use is appropriate:

(1) 3552.214–71, Additional Data To Be Submitted.

(2) 3552.214–72, Rejection of Bids.

(c) The contracting officer shall insert the provision at 3552.214–74, All or None Award—Sealed Bidding, in invitations for bids for supplies or services if the contracting officer determines that award will be made on an ''all or none'' basis to one bidder for all items because of the nature of the items (e.g., supply items must interface or otherwise be fully compatible with each other; items covering services are so interrelated that it would be impracticable to split the award).

(d)(1) The contracting officer shall insert the provision at 3552.214–75, All or None Award—Sealed Bidding—Construction, in invitations for bids for construction work that is estimated to exceed $10,000 if the contracting officer determines:

(i) To require bidding on all items, and

(ii) That award will be made on an ''all or none'' basis to one bidder for all items.

(2) If the construction work is not estimated to exceed $10,000, the contracting officer shall use the Alternate I version of provision 3552.214–75.

(3) If the contracting officer determines that:

(i) The contract work, regardless of its estimated value, will be awarded to one bidder for all the work, and

(ii) Bidding on all items will not be required, the Alternate II version of provision 3552.214–75 is to be used.

[55 FR 7647, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3514.205 Solicitation mailing lists.

3514.205–1 Establishment of lists.

(a) Each Commission contracting activity shall establish solicitation mailing lists as required by FAR 14.205–1.

(b) In order to carry out the requirements of the Treaty to give preference to the acquisition of supplies and services obtainable from sources in the Republic of Panama, each Commission contracting activity shall develop solicitation lists of local companies which can provide such supplies or services.

Subpart 3514.4—Opening of Bids and Award of Contract

3514.404 Rejection of bids.

3514.404–1 Cancellation of invitations after opening.

(c) The Procurement Executive, upon recommendation of the cognizant HCA, is authorized to make the determinations prescribed in FAR 14.404–1(c) when an invitation is to be cancelled and all bids rejected after bid opening but prior to award.

(e)(1) The Procurement Executive, upon recommendation of the cognizant HCA, may authorize the contracting officer to complete the acquisition through negotiation in the determination to cancel the invitation for bids when the conditions in FAR 14.404–1(c)(6) or (7) apply.

3514.406 Mistakes in bids.

3514.406–3 Other mistakes disclosed before award.

The cognizant HCA is delegated the authority to make the administrative determinations in connection with mistakes in bids prior to award. This authority may not be redelegated. The General Counsel must review and concur with all determinations under FAR 14.406–3.

3514.406–4 Mistakes after award.

(b) The cognizant HCA is authorized to make determinations on mistakes in bids disclosed after award. The General Counsel must review and concur with all determinations made under FAR 14.406.4.

3514.407 Award.

3514.407–1 General.

(a) The contracting officer shall make a contract award to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only the price and price-related factors contained in FAR 14.201–8. Particular attention shall be paid in supply contracts to evaluation of transportation costs to ensure that the award is made to the lowest overall responsive and responsible bidder.

3514.407–6 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) Preference shall be given to the bidder whose supplies or services are obtainable in the Republic of Panama;

(2) When two or more bidders offer supplies or services obtainable in Panama, preference shall be given to the bidder whose bid has a larger percentage of components of Panamanian origin;

(3) If two or more bidders remain equally low after application of paragraphs (a) (1) and (2) of this subsection, the tie-breaking procedures prescribed in FAR 14.407–6(b) shall be followed;

(4) The order of precedence established in FAR 14.407–6 (a) and (b).

(c) When award is made by using the priorities under this 3514.407–6, the contracting officer shall incorporate the written agreement prescribed in FAR 14.407–6(c) in the contract.

PART 3515—CONTRACTING BY NEGOTIATION

Sec.
3515.000 Scope of part.

Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations

3515.407 Solicitation provisions.

Subpart 3515.5—Unsolicited Proposals

3515.500 Scope of subpart.
3515.502 Policy.
3515.503 General.
3515.504 Advance guidance.
3515.506 Agency procedures.
3515.506–1 Receipt and initial review.
3515.506–2 Evaluation.
3515.507 Contracting methods.
3515.508 Prohibitions.

Subpart 3515.8—Price Negotiation

3515.802 Policy.
3515.804 Cost or pricing data.
3515.804–2 Requiring certified cost or pricing data.
3515.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
3515.804–6 Procedural requirements.

Subpart 3515.9—Profit

3515.902 Policy.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7648, Mar. 2, 1990, unless otherwise noted.

3515.000 Scope of part.

This part implements and supplements FAR part 15 by providing additional solicitation provisions and by providing Commission policies and procedures on unsolicited proposals, price negotiations, and profit.

Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations

3515.407 Solicitation provisions.

(a) In addition to the provisions prescribed in FAR 15.407, the contracting officer shall insert in solicitations the provisions at—

(1) 3552.215–70, Price; and

(2) 3552.215–71, Caution.

(b) The contracting officer shall insert the provision at 3552.215–72, All or None Award, in solicitations for supplies or services if the contracting officer determines that award will be made on an ''all or none'' basis to one offeror for all items because of the nature of the items (e.g., supply items must interface or otherwise be fully compatible with each other; items covering services are so interrelated that it would be impracticable to split the award). This provision may also be used in solicitations for construction if the contracting officer determines that its use is appropriate.

Subpart 3515.5—Unsolicited Proposals

3515.500 Scope of subpart.

This subpart implements and supplements the policies and procedures governing unsolicited proposals prescribed in FAR subpart 15.5. It also establishes the Commission contact point for coordinating the receipt, evaluation, and disposition of unsolicited proposals.

3515.502 Policy.

It is the policy of the Commission to receive, review, and consider for acceptance unsolicited proposals, as that term is defined in FAR 15.501 and further described in FAR 15.503(c). As indicated in FAR 15.502, such proposals may be accepted for sole source negotiation only when appropriate authority exists in FAR subpart 6.3 and when all conditions in FAR 15.507(b) have been complied with.

3515.503 General.

(f) Unsolicited proposals for the performance of services are, except as discussed in this paragraph, unacceptable as the performance of services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service, and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance, provided that such acceptance can be made in conformance with the policy in 3515.502.

3515.504 Advance guidance.

(a) It is not uncommon for sales representatives and engineers to approach field personnel of the Commission to discuss their products or proposals. Bureau Directors and Heads of Independent Units shall take the necessary steps to ensure that Commission employees do not make any commitments, explicit or implied, on behalf of the Commission to eventually procure such products or proposals. Whenever any person orally makes an ''unsolicited proposal'', Commission personnel shall inform the offeror that unsolicited proposals must be in writing and that further information should be obtained from the Commission's Procurement Executive or Assistant Procurement Executive before the offeror proceeds with the submission of a written proposal. Commission personnel may provide copies, if practicable, of FAR subpart 15.5 and subpart 3515.5 of this regulation to persons interested in submitting unsolicited proposals.

3515.506 Agency procedures.

(a) In order to allow the Commission sufficient time to evaluate the unsolicited proposal and negotiate any resultant contract, prospective contractors should submit their proposals, in triplicate, well in advance of the time they desire to commence their effort or activity. A minimum of six months advance submission is suggested (see FAR 15.505(c)(2)).

(b) The Procurement Executive is the Commission contact point to coordinate the receipt and handling of unsolicited proposals within the commission.

3515.506–1 Receipt and initial review.

(a) The Procurement Executive shall conduct an initial review of each unsolicited proposal to determine if it appears to (1) constitute a valid unsolicited proposal as described in FAR 15.503(c), and (2) meet the requirements contained in FAR 15.506–1(a). If so, the Procurement Executive shall acknowledge its receipt to the sender and initiate processing of the proposal for evaluation in accordance with 3515.506–2 of this subpart. If the proposal does not meet the requirements of FAR 15.506–1(a), or otherwise does not qualify as an unsolicited proposal, the Procurement Executive shall return it to the sender with appropriate comments.

3515.506–2 Evaluation.

(a) Promptly after receipt of an unsolicited proposal deemed to satisfy the requirements of 3515.506–1(a), the Procurement Executive shall forward the original and all copies to the cognizant contracting officer for further coordination of the technical evaluation of the proposal. The cognizant contracting officer shall (1) determine the appropriate Commission organization that would fund the acquisition (see FAR 15.507(b)(3)) in the event the unsolicited proposal would be acceptable for a negotiated award pursuant to FAR 15.507(b), and (2) forward a copy to that organization for technical evaluation. If more than one organization has a potential interest in the proposal, or should otherwise be included in the evaluation phase because of its technical expertise, copies of the proposal shall be circulated to each such office.

(b) Evaluating organizations shall complete their evaluations as quickly as practicable and forward them, together with all copies of the unsolicited proposal, to the cognizant contracting officer. Evaluations shall take into consideration the factors in FAR 15.506–2(a), shall be in writing, and shall include, in addition to a comprehensive technical analysis and conclusion(s), a recommendation as to the ultimate disposition of the proposal. When the recommendation is to accept the unsolicited proposal, the evaluation shall include the documentation required in FAR 15.507(b)(3).

3515.507 Contracting methods.

(a) If the unsolicited proposal is not recommended for acceptance after technical evaluation, the cognizant contracting officer shall return the proposal and all copies thereof to the offeror, citing the reasons why the proposal is not acceptable. A copy of the letter shall be furnished to the Procurement Executive.

(c) If the unsolicited proposal is acceptable as a basis for negotiation, the cognizant contracting officer shall:

(1) Obtain the concurrence of the General Counsel before proceeding with negotiations, and

(2) Advise the Procurement Executive in writing of such action.

3515.508 Prohibitions.

(b) All unsolicited proposals received by units of the Commission shall be treated ''FOR OFFICIAL USE ONLY'' and shall be protected from unauthorized disclosure. No copies shall be made except as authorized by the Procurement Executive or cognizant contracting officer, as appropriate. All Commission personnel who handle a proposal are responsible for safeguarding the information therein, and shall not disclose the information to unauthorized personnel within or outside of the Commission.

Subpart 3515.8—Price Negotiation

3515.802 Policy.

It is the policy of the Commission to obtain the cost or pricing data required pursuant to FAR 15.804 from all U.S. or

foreign (including Panama) prime contractors and subcontractors.

3515.804 Cost or pricing data.

3515.804–2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the dollar threshold at FAR 15.804–2(a) for requesting certified cost or pricing data, the value of the contract shall include any priced options. Exercise of a priced option is not considered a price adjustment and does not require submission of cost or pricing data.

3515.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

All findings rendered pursuant to FAR 15.804–3 (b)(2)(iii) and (c)(8) shall be approved by the cognizant HCA with the concurrence of the General Counsel. The exemptions permitted under FAR 15.804–3(g) and the waivers permitted under FAR 15.804–3(i) shall be authorized by the cognizant HCA with the concurrence of the General Counsel.

3515.804–6 Procedural requirements.

For requests for proposals or modifications not exceeding $25,000, the contracting officer may require contractors to submit information for cost or price analysis on Panama Canal Form No. 6122, Cost Breakdown, at 3553.215.

Subpart 3515.9—Profit

3515.902 Policy.

(a) The Commission shall use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions of $500,000 or more that require cost analysis based on the profit analysis factors in FAR 15.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.905–1 when analyzing profit for these contracts or actions:

(1) All actions which do not require cost analysis;

(2) Architect-engineer contracts;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements; and

(6) Other professional services.

(c) In developing a profit or fee prenegotiation objective, the contracting officer shall comply with the requirements in FAR 15.903.

(d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205–10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective.

(e) The cognizant HCA is responsible for establishing procedures to ensure compliance with this subpart.

PART 3516—TYPES OF CONTRACTS

Sec.

3516.000 Scope of part.

Subpart 3516.3—Cost-Reimbursement Contracts

3516.301 General.
3516.301–3 Limitations.

Subpart 3516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3516.601 Time-and-materials contracts.
3516.603 Letter contracts.
3516.603–2 Application.
3516.603–3 Limitations.
3516.603–70 Information to be furnished when requesting authority to issue a letter contract.
3516.603–71 Approval for modifications to letter contracts.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7650, Mar. 2, 1990, unless otherwise noted.

3516.000 Scope of part.

This part implements and supplements FAR part 16. It provides Commission policies and procedures for preparation of determinations and findings authorizing use of cost-reimbursement contracts, and for use of time-and-materials and letter contracts.

Subpart 3516.3—Cost-Reimbursement Contracts

3516.301 General.

3516.301–3 Limitations.

(c) The following format shall be used and executed by the contracting officer as the determination and findings authorizing the use of a cost-reimbursement contract:

PANAMA CANAL COMMISSION

Determination and Findings

Authority to Use Cost-Reimbursement Contract

I hereby find that:

(1) The (Bureau/Division name) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($_____) (if contract is CPFF type, insert, (''plus a fixed fee of ($_____) which is ____ percent of the estimated cost exclusive of fee'').

(2) (Set forth facts and circumstances that show why it is impracticable to acquire supplies or services of the kind or quality required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings, it is impracticable to acquire supplies or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed fee*) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed fee*) method of contracting is likely to be less costly than other methods.

Date _____

_____

(Signature)

*Contracting officer inserts appropriate type of contract.

The determination and findings for all cost-reimbursement and incentive/award fee type contracts shall be reviewed and approved by the HCA.

Subpart 3516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3516.601 Time-and-materials contracts.

(c) *Limitations.* The format prescribed in 3516.301–3(c) shall be used and executed by the contracting officer as the determination and findings authorizing the use of either a time-and-materials contract or a labor-hour contract, except that in lieu of the final paragraph insert the following:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the acquisition of the required supplies or services.

3516.603 Letter contracts.

3516.603–2 Application.

(a) It is the policy of the Panama Canal Commission to refrain from issuing letter contracts. Exceptions to this policy will be permitted only in those cases in which all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon. Exceptions to this policy must be approved by the Administrator.

3516.603–3 Limitations.

The cognizant HCA is designated to execute the prescribed determination that no other contract is suitable. However, if the cognizant HCA is to sign the letter contract as the contracting officer, the Procurement Executive shall execute the determination.

3516.603–70 Information to be furnished when requesting authority to issue a letter contract.

The following information should be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of definitized contract.

(h) Type of contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Commission of the use of the proposed letter contract.

(j) Statement of the percentage of the estimated cost of the proposed acquisition that the obligation of funds represents. In those rare instances in which the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included describing the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must ensure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of the proposed letter contract.

(l) Statement of any substantive matters that need to be resolved.

3516.603–71 Approval for modifications to letter contracts.

All letter contract modifications must be approved by the cognizant HCA responsible for the acquisition. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be definitized at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased, if applicable.

(h) If the funding of letter contracts is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 3516.603–70(j) must be included.

PART 3517—SPECIAL CONTRACTING METHODS

Subpart 3517.2—Options

Sec.
3517.200 Scope of subpart.
3517.203 Solicitations.
3517.204 Contracts.
3517.207 Exercise of options.

Subpart 3517.5—Interagency Acquisitions Under the Economy Act

3517.500 Scope of subpart.
3517.501 Definitions.
3517.502 General.
3517.504 Ordering procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7651, Mar. 2, 1990, unless otherwise noted.

Subpart 3517.2—Options

3517.200 Scope of subpart.

This subpart does not apply to contracts for services involving:

(a) Construction, alteration, or repair of real property;

(b) Architect-engineer services;

(c) Automatic data processing equipment systems; and

(d) Telecommunication equipment and services.

However, it does not preclude the use of options in those contracts.

3517.203 Solicitations.

(g)(2) The use of options for increased quantities of supplies or services which exceed 50 percent of the base quantity specified in the contract for a particular period shall be approved by the cognizant HCA prior to issuing the solicitation. In the case of supplies, the 50 percent limitation applies only to contracts which have a base quantity of more than one.

3517.204 Contracts.

(e) The use of option periods which, when combined with the base contract period, results in a total contract period of performance exceeding twelve

months shall be approved by the cognizant HCA prior to issuing the solicitation. In no event, however, shall the total of the base and option periods exceed sixty (60) months in duration.

3517.207 Exercise of options.

(h) The contracting officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d) and FAR 32.703–2, exercise an option contingent upon the availability of funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Commission until a formal notice of availability of funds in the form of a contract modification has been issued by the contracting officer.

Subpart 3517.5—Interagency Acquisitions Under the Economy Act

3517.500 Scope of subpart.

This subpart prescribes policies and procedures applicable to the use of Interservice Support Agreements and Memorandums of Understanding.

3517.501 Definitions.

Interservice Support Agreement (ISA) means an agreement entered into between the Panama Canal Commission and any other department or agency of the United States for the use of facilities, furnishing of supplies or services, or performance of functions. ISA's may be based upon Memorandums of Understanding.

Memorandum of Understanding (MOU) means the basic document which outlines host-tenant relationships. MOU's serve as the standard for relationships between host units and supporting or supported activities.

3517.502 General.

The General Services Director is the Commission official authorized to enter into ISA's. The Director, by written appointment, may delegate this authority to one or more contracting officers in the General Services Bureau. The determination and findings required by FAR 17.503 shall be made by the General Services Director or the appointee(s), as applicable.

3517.504 Ordering procedures.

(a) The procedures in FAR 17.504 shall apply to Commission ISA's.

(b) When the other agency to an ISA is a DOD activity, the DOD forms and format normally shall be followed.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 3519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 3519.2—Policies

Sec.
3519.201 General policy.
3519.202–3 Equal low bids.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

Subpart 3519.2—Policies

3519.201 General policy.

(a) Any acquisition which requires the solicitation of bids, proposals, or quotes from sources within Panama and also from sources within the United States shall not be restricted by any United States statute that is inconsistent with Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty.

(d) The Chief, New Orleans Branch, Logistical Support Division, shall discharge the functions of the Small and Disadvantaged Business Utilization Specialist (SDBUS).

[55 FR 7651, Mar. 2, 1990]

3519.202–3 Equal low bids.

In the event of equal low bids, contracts shall be awarded in the order of priority set forth in 3514.407–6.

[55 FR 7651, Mar. 2, 1990]

PART 3520—LABOR SURPLUS AREA CONCERNS

Subpart 3520.1—General

Sec.
3520.102 General policy.
3520.103 Contract clause.

Subpart 3520.2—Set-asides

3520.201 Set-asides for labor surplus area concerns.
3520.201–1 Total set-asides.

Subpart 3520.3—Labor Surplus Area Subcontracting Program

3520.301 General.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7651, Mar. 2, 1990, unless otherwise noted.

Subpart 3520.1—General

3520.102 General policy.

Subject to the order of precedence in FAR 19.504, the Panama Canal Commission shall award appropriate contracts to eligible labor surplus area (LSA) concerns and encourage contractors to place subcontracts with LSA concerns only when all of the following circumstances exist:

(a) The acquisition is to be performed within the United States, its territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

(b) The concern, together with its first-tier subcontractors, will perform substantially in labor surplus areas as defined in FAR 20.101; and

(c) The value of the acquisition is estimated to exceed the small purchase limitation in FAR part 13.

3520.103 Contract clause.

(b) The contract clause at FAR 52.220–1, Preference for Labor Surplus Area Concerns, shall be included in solicitations and contracts only as prescribed by FAR 20.103(b) and under those conditions set forth in 3520.102.

Subpart 3520.2—Set-asides

3520.201 Set-asides for labor surplus area concerns.

3520.201–1 Total set-asides.

The contracting officer shall set aside the entire amount of an individual acquisition or class of acquisitions for LSA concerns only under those conditions set forth in 3520.102.

Subpart 3520.3—Labor Surplus Area Subcontracting Program

3520.301 General.

The provisions of FAR subpart 20.3 apply only under those conditions set forth in 3520.102.

PART 3522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
3522.000 Scope of part.

Subpart 3522.1—Basic Labor Policies

3522.100 Scope of subpart.
3522.103 Overtime.
3522.103–4 Approvals.

Subpart 3522.2—Convict Labor

3522.270 Applicability.

Subpart 3522.3—Contract Work Hours and Safety Standards Act

3522.370 Applicability.

Subpart 3522.4—Labor Standards for Contracts Involving Construction

3522.402 Applicability.

Subpart 3522.6—Walsh-Healey Public Contracts Act

3522.603 Applicability.
3522.608 Procedures.
3522.608–3 Protests against eligibility.
3522.608–4 Award pending final determination.
3522.608–6 Postaward.

Subpart 3522.8—Equal Employment Opportunity

3522.803 Responsibilities.
3522.804 Affirmative action programs.
3522.804–2 Construction.
3522.805 Procedures.
3522.807 Exemptions.
3522.808 Complaints.
3522.809 Enforcement.
3522.810 Solicitation provisions and contract clauses.

Subpart 3522.10—Service Contract Act of 1965, as Amended

3522.1003 Applicability.

Subpart 3522.13—Special Disabled and Vietnam Era Veterans

3522.1302 Applicability.
3522.1303 Waivers.
3522.1306 Complaint procedures.

Subpart 3522.14—Employment of the Handicapped

3522.1402 Applicability.
3522.1403 Waivers.
3522.1406 Complaint procedures.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7652, Mar. 2, 1990, unless otherwise noted.

3522.000 Scope of part.

This part prescribes—

(a) Labor laws of the United States and their application to acquisitions conducted by the Panama Canal Commission; and

(b) Contracting policy and procedures for the implementation of pertinent labor laws in contracts with United States and Panamanian business concerns. (See subpart 3525.8 for policies and procedures pertaining specifically to contracts with Panamanian business concerns or others to which Panamanian laws may apply.)

Subpart 3522.1—Basic Labor Policies

3522.100 Scope of subpart.

The provisions of FAR subpart 22.1 shall apply specifically to contracts with United States business concerns to the extent prescribed throughout FAR part 22.

3522.103 Overtime.

3522.103–4 Approvals.

(a) Overtime requests by contractors may be approved under the conditions contemplated in FAR 22.103–4(a). Such approvals are required under cost-reimbursement, time-and-materials, and labor-hour contracts since such contracts place substantial cost risk on the Government.

(b) The Commission officials for approval of contractor requests for overtime in cost-reimbursement contracts as contemplated in FAR 22.103–4 (a), (b), and (f) are the cognizant Heads of Contracting Activities.

Subpart 3522.2—Convict Labor

3522.270 Applicability.

As indicated at FAR 22.202, the policies and procedures in FAR subpart 22.2 are applicable only to contracts which are to be performed within any State,

the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands. The policies and procedures do not apply to contracts which are to be performed within the Republic of Panama or within any other foreign country.

Subpart 3522.3—Contract Work Hours and Safety Standards Act

3522.370 Applicability.

As indicated at FAR 22.305, the policies and procedures in FAR subpart 22.3 shall not be applied to contracts to be performed solely within the Republic of Panama, other foreign countries, 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.

Subpart 3522.4—Labor Standards for Contracts Involving Construction

3522.402 Applicability.

(c) *Contracts to be performed outside the United States.* As indicated by paragraphs (a) through (d) at FAR 22.407, the requirements of FAR subpart 22.4 do not apply to contracts for construction to be performed within the Republic of Panama or within any other foreign country.

Subpart 3522.6—Walsh-Healey Public Contracts Act

3522.603 Applicability.

As indicated at FAR 22.603 and FAR 22.604–2, the requirements and procedures of FAR subpart 22.6 and this subpart 3522.6 do not apply to contracts for supplies that are manufactured in the Republic of Panama or elsewhere outside the United States, Puerto Rico or the Virgin Islands.

3522.608 Procedures.

3522.608–3 Protests against eligibility.

The contracting officer shall forward the determination of eligibility, after concurrence by legal counsel, to the cognizant Head of Contracting Activity (HCA) for referral to the Department of Labor (DOL) or to the Small Business Administration if the offeror is a small business.

3522.608–4 Award pending final determination.

(a) If an offeror's eligibility case is pending review by the DOL or SBA, the contracting officer shall obtain the concurrence of legal counsel and approval of the cognizant HCA prior to making an award.

3522.608–6 Postaward.

(c) In the event of a violation of a stipulation required under the Act, the contracting officer shall, with concurrence by legal counsel and approval by the cognizant HCA, notify the appropriate regional office of the DOL.

Subpart 3522.8—Equal Employment Opportunity

3522.803 Responsibilities.

(d) If the applicability of Executive Order 11246 and implementing regulations are questioned by any commercial firm or other entity with whom the Panama Canal Commission has contracted or contemplates contracting, the contracting officer shall route the matter to the cognizant HCA, who shall obtain the opinion of legal counsel.

3522.804 Affirmative action programs.

3522.804–2 Construction.

(b) The HCA having construction contract responsibility shall maintain and distribute a current list of geographical areas subject to affirmative action requirements to the principally affected contracting officers. The list may be obtained from the regional Office of Federal Contract Compliance Policy (OFCCP).

3522.805 Procedures.

(a) The contracting officer shall obtain a preaward clearance as required by FAR 22.805(a) (2), (3), and (5). Where, as contemplated in FAR 22.805(a)(7), there exists a potential delay in award of an urgent and critical contract, and where the OFCCP advises of its inability to timely complete the review, a written justification for award shall be forwarded to the cognizant HCA for approval of award without preaward clearance.

(b) The contracting officer shall obtain and maintain an adequate supply of the posters entitled ''Equal Opportunity is the Law'' for distribution to contractors when applicable.

3522.807 Exemptions.

(b) Panama Canal Commission contracts are exempt from the Equal Employment Opportunity provisions of Executive Order 11246 to the extent that work is performed outside the United States by employees who were not recruited within the United States. (See FAR 22.801 for the meaning of ''United States'' as used herein.)

(c) Requests for exemption pursuant to FAR 22.807(c) shall be submitted to the Director, OFCCP, through the cognizant HCA.

3522.808 Complaints.

Information regarding all complaints and subsequent referrals shall be forwarded to the cognizant HCA.

3522.809 Enforcement.

The Procurement Executive is designated to make the determinations that may be exercised against contractors pursuant to FAR 22.809.

3522.810 Solicitation provisions and contract clauses.

All solicitation provisions and contract clauses prescribed in FAR 22.810 are applicable to contracts awarded by the Panama Canal Commission unless an exemption exists or has been obtained in accordance with FAR 22.807 and 3522.807.

Subpart 3522.10—Service Contract Act of 1965, as Amended

3522.1003 Applicability.

As indicated at FAR 22.1003–2, the policies and procedures in FAR subpart 22.10 do not apply to service contracts to be performed in the Republic of Panama or elsewhere outside the United States. (See FAR 22.1001 for the meaning of ''United States'' as used herein.)

Subpart 3522.13—Special Disabled and Vietnam Era Veterans

3522.1302 Applicability.

Panama Canal Commission contracts are exempt from the provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1972 to the extent that the work is performed outside the United States by employees who were not recruited in the United States. (See FAR 22.1308(a)(1) for the meaning of ''United States'' as used herein.)

3522.1303 Waivers.

(a) The Administrator of the Panama Canal Commission is the ''agency head'' or the ''head of a civilian agency'' for purposes of the provisions of FAR 22.1303 (a) and (b)(1), respectively.

(c) Requests for waivers shall be forwarded to the cognizant HCA for referral to the administrator for approval.

3522.1306 Complaint procedures.

The contracting officer shall forward written complaints to the cognizant HCA for subsequent referral to the Director, OFCCP.

Subpart 3522.14—Employment of the Handicapped

3522.1402 Applicability.

(a) Panama Canal Commission contracts are exempt from the Rehabilitation Act of 1973 to the extent that the work is performed outside the United States by employees who were not recruited within the United States. (See FAR 22.1408(a)(1) for the meaning of ''United States'' as used herein.)

3522.1403 Waivers.

(a) The Administrator of the Panama Canal Commission is the ''agency head'' or the ''head of a civilian agency'' for purposes of the provisions of FAR 22.1403 (a) and (b)(1), respectively.

(c) Requests for waivers shall be forwarded through the cognizant HCA to the Administrator for approval.

3522.1406 Complaint procedures.

Complaints regarding administration of the Act shall be forwarded to the cognizant HCA prior to submission to the OFCCP.

PART 3524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3524.1—Protection of Individual Privacy

Sec.
3524.102 General.

Subpart 3524.2—Freedom of Information Act

3524.270 Procedures.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3524.1—Protection of Individual Privacy

3524.102 General.

Personal information obtained by the agency to be used in determining an individual's right to a benefit, or to otherwise incur an obligation, will be solicited directly from the subject of the record to the extent practicable. The system manager responsible for the maintenance and dissemination of personal information about individuals shall ensure that the information is collected and disclosed in compliance with the provisions of the Privacy Act of 1974 and part 10 of 35 CFR, this agency's regulations implementing the Act.

[55 FR 7653, Mar. 2, 1990]

Subpart 3524.2—Freedom of Information Act

3524.270 Procedures.

Freedom of Information Act (FOIA) requests for contractual information shall be processed in accordance with part 9 of 35 CFR.

(a) Upon receipt, all FOIA requests shall be forwarded immediately to the Agency Records Officer (Chief, Administrative Services Division) for acknowledgment and processing within the statutory time limitations as stipulated in the Act.

(b) Prior to release of any contractual information to FOIA requesters, the Agency Records Officer shall coordinate with other agency offices or officials having a substantial subject matter interest.

[55 FR 7653, Mar. 2, 1990]

PART 3525—FOREIGN ACQUISITION

Sec.
3525.000 Scope of part.

Subpart 3525.1—Buy American Act—Supplies

3525.102 Policy.

Subpart 3525.2—Buy American Act—Construction Materials

3525.202 Policy.

Subpart 3525.3—Balance of Payments Program

3525.300–70 Applicability.
3525.302 Policy.

Subpart 3525.4—Purchases Under the Trade Agreements Act of 1979

3525.402 Policy.

Subpart 3525.670—Customs and Duties, Republic of Panama

3525.670–1 Policy.
3525.670–2 Procedures.

Subpart 3525.8—International Agreements and Coordination

3525.801 International agreements.
3525.801–70 Language.
3525.801–71 Choice of law.
3525.801–72 Immunity.
3525.801–73 Designated contractors.
3525.801–74 Panamanian preference.
3525.801–75 Customary local business usage.
3525.801–76 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); Article VIII of the Panama Canal Treaty of 1977 and Articles IX, XI, and XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7654, Mar. 2, 1990, unless otherwise noted.

3525.000 Scope of part.

This part provides policies and procedures related to the application of the Buy American Act, the Balance of Payments Act, and purchases under the Trade Agreements Act of 1979 to Commission acquisitions. This part also provides policies and procedures for the application of international agreements to Commission acquisitions.

Subpart 3525.1—Buy American Act—Supplies

3525.102 Policy.

The Buy American Act does not apply to purchases of supplies, or services that involve the furnishing of supplies, for use in the Republic of Panama because such use is outside the United States, as provided in FAR 25.102(a)(1).

[55 FR 7654, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

Subpart 3525.2—Buy American Act—Construction Materials

3525.202 Policy.

The Buy American Act does not apply to contracts for the construction, alteration, or repair of any public building or public work in the Republic of Panama. The Act applies only to acquisitions for use inside the United States, as provided in FAR 25.202.

Subpart 3525.3—Balance of Payments Program

3525.300–70 Applicability.

In accordance with Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty, the Balance of Payments provisions limiting purchase of foreign products or services shall not apply to purchases for use by the Commission of—

(a) Articles, materials, or supplies that are produced in Panama (mined, produced, or manufactured);

(b) End products, the largest percentage of which are components of Panamanian origin; and

(c) Services which are available in Panama.

3525.302 Policy.

(a) The cognizant HCA is the official designated to make the determination required by FAR 25.302(b)(3) that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forego filling it or to provide a domestic substitute.

(b)(6) The Procurement Executive is the official designated to make the determination, with the assistance of legal counsel, that the acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

Subpart 3525.4—Purchases Under the Trade Agreements Act of 1979

3525.402 Policy.

(c) Pursuant to a delegation from the United States Trade Representative under the authority provided by section 302(b)(2) of the Trade Agreements Act, the Administrator of the Panama Canal Commission is authorized to waive, on a case-by-case basis, the purchasing prohibition of section 302(a)(1) of the Act. The Administrator has delegated this waiver authority to the Procurement Executive.

Subpart 3525.670—Customs and Duties, Republic of Panama

3525.670–1 Policy.

(a) Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty provides that all property imported into the Republic of Panama for the official use or benefit of the Commission, including that imported by its contractors or subcontractors in connection with the various activities authorized under said Agreement, shall be exempt from the payment of all customs duties or other import taxes and charges and from all license requirements.

(b) All property imported into the Republic of Panama free of customs duties and other taxes may be exported free of customs duties, export permits, export taxes, and other assessments. All property acquired in the Republic of Panama by, or in the name of, the Commission may be exported free of customs duties, export licenses, and other export taxes or charges.

3525.670–2 Procedures.

When requested by the contractor or its representative, the contracting officer will initiate a cargo certification document stating that the property being imported is for the official use or benefit of the Commission. The cargo certification document is then processed by the Cargo Documentation Section of the Commission's Administrative Services Division for presentation by the contractor or representative to the appropriate authorities in the Republic of Panama.

Subpart 3525.8—International Agreements and Coordination

3525.801 International agreements.

The Panama Canal Treaty and the Agreement in Implementation of Article III of the Treaty affect the contracting activities of the Commission. Contracting officers shall give particular attention to the provisions in these agreements that pertain to acquisition procedures, contractors' taxes, facilities, and other matters relating to contracting.

3525.801–70 Language.

(a) Solicitations and contracts shall be issued in the English language.

(b) All offers, correspondence and documents related to solicitations and contracts shall be submitted in the English language.

(c) Where inconsistencies between the terms of solicitations or contracts and any translation into another language occur, the English language meaning shall control.

3525.801–71 Choice of law.

All matters relating to the validity, construction, interpretation, performance, and enforcement of any contract awarded by the Commission shall be determined in accordance with the applicable Federal law of the United States.

3525.801–72 Immunity.

Under Article VIII of the Treaty, agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to the Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama, and their installations, official archives and documents, shall be inviolable.

3525.801–73 Designated contractors.

(a) *Definition.*

Designated contractors means:

(1)(i) Natural persons who are nationals or permanent residents of the United States, or

(ii) Corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of such natural persons—

(A) To whom contracts are awarded by the Commission, and

(B) Who are so designated in writing by the Commission.

(2) The term also includes subcontractors of designated contractors:

(i) Who are nationals or permanent residents of the United States, or

(ii) Which are corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

(3) Because Article XI of the Treaty's Implementing Agreement (see paragraph (b) of this subsection and 3502.101) imposes certain obligations and confers certain benefits on designated contractors, all of which are dependent upon their or their employees' physical presence in Panama, the term is understood to mean only those contractors and/or subcontractors that will perform all or a portion of the contract work in the Republic of Panama. Such contractors are normally designated at the time of contract award.

(b) *Obligations and benefits.* Designated contractors are subject to the laws and regulations of the Republic of Panama except for certain obligations and benefits established in Article XI of the Agreement in Implementation of Article III of the Treaty. These obligations and benefits are cited below.

(1) The contractor must engage exclusively in activities related to the execution of the work for which the contractor has been contracted by the Commission or related to other works or activities authorized by the Republic of Panama.

(2) The contractor must refrain from carrying out practices which may constitute violations of the laws of the Republic of Panama.

(3) The contractor shall enter and depart from the territory of the Republic of Panama in accordance with procedures prescribed for United States citizen employees in Article XII of the Implementing Agreement.

(4) The contractor must obtain a document indicating his/her identity as a contractor, which the proper authorities of the United States shall issue when they are satisfied that the contractor is duly qualified. This certificate shall be sufficient to permit the contractor to operate under Panamanian law as a contractor of the United States. Nevertheless, the authorities of the Republic of Panama may require the registration of the appropriate documents to establish juridical presence in the Republic of Panama.

(5) The contractor shall not be obliged to pay any tax or other assessment to the Republic of Panama on income derived under a contract with the Commission, so long as the contractor is taxed in the United States at a rate substantially equivalent to the corresponding taxes and assessments of the Republic of Panama.

(6) The contractor may move freely within the Republic of Panama, and shall have exemptions from customs duties and other charges, as provided for United States citizen employees in the Implementing Agreement.

(7) The contractor may use public services and installations in accordance with the terms and conditions of Article XIII of the Implementing Agreement and, on a non-discriminatory basis, shall pay the Republic of Panama highway tolls and taxes on plates for private vehicles.

(8) The contractor shall be exempt from any taxes imposed on depreciable assets belonging to the contractor, other than real estate, which are used exclusively for the execution of contracts with the United States.

(9) The contractor may use the services and facilities provided for in Articles X and XVIII of the Agreement in Implementation of Article IV of the Panama Canal Treaty, to the extent such use is authorized by the United States; provided, however, that after five years from the entry into force of the Implementing Agreement, the use of military postal services by such contractors shall be limited to that related to the execution of contracts with the United States.

(c) *Notification of designation.* The contracting officer shall, through the Director, Office of Executive Administration, advise contractors that they are ''designated contractors'' within the meaning of Article XI of the Implementing Agreement and advise them to review their obligations thereunder. Such designations shall be communicated to the authorities of the Republic of Panama by the authorities of the United States. Contracting officers shall maintain current lists of ''designated contractors'' at all times.

(d) *Withdrawal of designation.* The Commission shall withdraw the designation of a contractor when any of the following circumstances occur:

(1) Completion or termination of the contract with the Commission.

(2) Proof that during the life of the contract such contractors have engaged in the Republic of Panama in business activities not related to their contracts with the United States nor authorized by the Republic of Panama.

(3) Proof that such contractors are engaged in practices which in the view of the Republic of Panama constitute serious violations of the laws of the Republic of Panama.

The authorities of the United States shall notify the authorities of the Republic of Panama whenever the designation of a contractor has been withdrawn. If, within sixty days after notification of the withdrawal of the designation of a contractor who entered the territory of the Republic of Panama in the capacity of a contractor, the authorities of the Republic of Panama require such contractor to leave its territory, the United States shall ensure that the Republic of Panama shall not incur any expense due to the cost of transportation.

(e) *Impact on subcontractors, employees, and dependents.* The provisions of this 3525.801–73 shall similarly apply to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be subject to the Panamanian Social Security system.

3525.801–74 Panamanian preference.

(a) Article IX of the Agreement in Implementation of Article III of the Treaty provides that:

> In procuring supplies and services, the Commission shall give preference to those obtainable in the Republic of Panama. Such preference shall apply to the maximum extent possible when such supplies and services are available as required, and are comparable in quality and price to those which may be obtained from other sources. For the comparison of prices there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance and handling, of the supplies and services which compete with Panamanian supplies and services. In the acquisition of goods in the Republic of Panama, preference shall be given to goods having a larger percentage of components of Panamanian origin.

(b) Part 3570 provides guidance on the implementation of the Panamanian preference provisions of the Treaty's Implementing Agreement.

3525.801–75 Customary local business usage.

In acquisitions conducted in the Republic of Panama, customary local business usage, where not inconsistent with the applicable Federal law of the United States, may be followed. When conflicts develop between local business usage and the requirements of the Federal Acquisition Regulation, the matter shall be referred to the Procurement Executive, who shall seek the opinion of legal counsel, as a deviation for processing as required by 3501.405 and FAR 1.405.

3525.801–76 Contract clauses.

As used in this subsection, the term ''foreign'' means any country other than the United States. The contracting officer shall insert the following clauses in solicitations and contracts, as indicated below:

(a) In lieu of FAR clause 52.225–14, Inconsistency Between English Version and Translation of Contract, the clause at 3552.225–70, Language, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(b) The clause at 3552.225–71, Notice of Applicability of United States Federal Law, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(c) The clause at 3552.225–72, Designated Contractors, whenever the contract work is to be performed in whole or in part in the Republic of Panama and offers are anticipated from, or contracts are awarded to, U.S. contractors.

(d) The clause at 3552.225–73, Responsibility for Observance of Laws, Orders, and Regulations, whenever the contract work is to be performed in whole or in part in the Republic of Panama.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 3527—PATENTS, DATA AND COPYRIGHTS

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3527.3—Patent Rights Under Government Contracts

3527.304–3 Contracts for construction work or architect-engineer services.

(b) The contracting officer shall insert the clause at 3552.227–70, Government Rights, in all solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those that call for or can be expected to involve only ''standard types of construction'' to be built by previously developed equipment, methods, and processes. (See FAR 27.304–3(b) for the meaning of the term ''standard types of construction''.)

[55 FR 7656, Mar. 2, 1990]

PART 3528—BONDS AND INSURANCE

Subpart 3528.1—Bonds

Sec.
3528.100 Scope of subpart.
3528.101 Bid or proposal guarantees.
3528.101–3 Contract clauses.
3528.102 Performance and payment bonds for construction contracts.
3528.102–1 General.
3528.102–3 Solicitation requirements.
3528.103 Performance and payment bonds for other than construction contracts.
3528.103–2 Performance bonds.
3528.103–3 Payment bonds.
3528.103–70 Contract clauses.

Subpart 3528.2—Sureties

3528.201 Requirements for sureties.
3528.202 Acceptability of corporate sureties.
3528.202–70 Corporate seals.

Subpart 3528.3—Insurance

3528.301 Policy.
3528.305 Overseas workers' compensation and war-hazard insurance.
3528.309 Contract clause for workers' compensation insurance.
3528.370 Contract clause for special Panama insurance.

AUTHORITY: 40 U.S.C. 486(c); Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7656, Mar. 2, 1990, unless otherwise noted.

Subpart 3528.1—Bonds

3528.100 Scope of subpart.

Bid or proposal guarantees, performance bonds, and payment bonds in Panama Canal Commission acquisitions may be required in contracts for construction as that term is defined at FAR 36.102, and in contracts for other than construction as explained at FAR 28.103.

3528.101 Bid or proposal guarantees.

3528.101–3 Contract clauses.

(a) When a guarantee is required, the contracting officer shall insert the clause at 3552.228–70, Bid Guarantee Amount, in sealed bid solicitations and contracts, or the clause at 3552.228–75, Proposal Guarantee, in negotiated solicitations and contracts, as applicable.

(b) If the contract is to be negotiated, the contracting officer shall insert the clause at 3552.228–75, Proposal Guarantee, in lieu of the bid guarantee clause at FAR 52.228–1.

3528.102 Performance and payment bonds for construction contracts.

3528.102–1 General.

(a) The Miller Act (40 U.S.C. 270a–270f) requires performance and payment bonds for any construction contract (including contracts for alteration, or repair of any public building or public work) exceeding $25,000, except that this requirement may be waived by the contracting officer for work to be performed in a foreign country upon the finding contemplated in FAR 28.102–1(a)(1). It has been determined by the Panama Canal Commission General Counsel, however, that the contracting officer may also establish requirements for such bonds for lesser dollar value contracts when it has been determined that the financial protection against damages is in the

best interests of the Government. Accordingly, the provisions of 3528.102–3 regarding solicitation requirements must be followed.

3528.102–3 Solicitation requirements.

When performance or payment bonds are required, the contracting officer shall insert the clauses at 3552.228–71, Bonds and Insurance, and 3552.228–72, Bonds, in the solicitation and contract.

3528.103 Performance and payment bonds for other than construction contracts.

3528.103–2 Performance bonds.

(a) Contracts for high dollar acquisitions of vital supplies, such as cargo lot shipments of Bunker C fuel oil, is another situation that may warrant a performance bond.

3528.103–3 Payment bonds.

(a) A payment bond may be considered to be in the Government's interest when substantial progress payments are made before delivery of end items starts (for example, in the acquisition of tugboats and dredges).

3528.103–70 Contract clauses.

(a) *Performance bonds.* When a performance bond for other than construction contracts is required pursuant to FAR 28.103–2(a), but a payment bond is not required, the contracting officer shall insert the clause at 3552.228–76, Performance Bond, in all such solicitations and contracts. If a payment bond is also required (see FAR 28.103–3(a) and 3528.103–3(a)), the contracting officer shall insert the clause at 3552.228–77, Performance and Payment Bonds, in lieu of clause 3552.228–76.

(b) *Payment bonds.* When a payment bond for other than construction contracts is required pursuant to FAR 28.103–3(a) and 3528.103–3(a), the contracting officer shall insert the clause at 3552.228–77, Performance and Payment Bonds, in all such solicitations and contracts.

Subpart 3528.2—Sureties

3528.201 Requirements for sureties.

(a) In addition to those acceptable forms of security enumerated in FAR 28.201, contracting officers may accept such Panamanian sureties as may be approved in accordance with 3528.202(b).

(b) Contracting officers may not preclude the use by any offeror of any type of security or surety permitted by FAR subpart 28.2 or this subpart.

[55 FR 7656, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3528.202 Acceptability of corporate sureties.

(b) The authority delegated to contracting officers in FAR 28.202(b) to determine the acceptability of sureties not appearing on Treasury Department Circular 570 for contracts performed in a foreign country is vested in the Chief Financial Officer of the Panama Canal Commission. The procedure for approving such sureties is prescribed in the Commission's Financial Systems Manual 99.333.

[55 FR 7656, Mar. 2, 1990. Redesignated and amended at 55 FR 38331, Sept. 18, 1990]

3528.202–70 Corporate seals.

(a) In the event that a ''Corporate Seal,'' as required in the instructions for preparation of any standard form or document, is not used due to the dictates of custom, practice, or law within Panama or other foreign countries, such bonds shall be accepted provided the contracting officer is satisfied, with the concurrence of legal counsel, that the person signing the bond is authorized to bind the surety (see FAR 4.102).

(b) In the case of acquisitions conducted using the sealed bid method described in FAR part 14, bids which do not include required bid bonds must be rejected as nonresponsive except as provided in FAR 28.101–4. See also FAR 14.405 regarding minor informalities or irregularities in bids.

Subpart 3528.3—Insurance

3528.301 Policy.

(b) In addition to the requirements of FAR 28.301(b), designated contractors (see 3525.801–73(a)), as prescribed at paragraph 7 of Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, shall, upon initiation of work or

construction activities, obtain appropriate insurance to cover civil liabilities in the Republic of Panama that may arise as a result of acts or omissions done in the performance of official duty by their employees. The insurance coverage shall include coverage for the tortious conduct of their employees. Such insurance may be obtained from insurance companies licensed to engage in such business within the Republic of Panama.

3528.305 Overseas workers' compensation and war-hazard insurance.

(d) Pursuant to a waiver granted by the Secretary of Labor, effective January 22, 1980, the provisions of the Defense Base Act are not applicable to any public-work contract awarded by the Panama Canal Commission in the Panama Canal area with respect to non-U.S. citizen employees, i.e., any Panamanian or other foreign national, employed under such contracts. The waiver does not apply, however, to employees who are:

(1) Hired in the United States by any contractor;

(2) Residents of the United States; or

(3) Citizens of the United States.

The waiver was granted with the proviso that the non-U.S. citizen employees thus exempted from the provisions of the Defense Base Act will be provided workers' compensation benefits prescribed in the Panamanian Social Security System.

3528.309 Contract clause for workers' compensation insurance.

(a) In addition to FAR clause 52.228–3, Workers' Compensation Insurance (Defense Base Act), prescribed at FAR 28.309(a)(1), the contracting officer shall insert the clause at 3552.228–73, Non-U.S. Workers' Compensation Insurance, in all public-work solicitations and contracts in which the employment of Panamanian or other foreign nationals is anticipated (see 3528.305(d)).

3528.370 Contract clause for special Panama insurance.

The contracting officer shall insert the clause at 3552.228–74, Special Panama Insurance, in all public-work solicitations and contracts:

(a) Which are to be performed in whole or in part in the Republic of Panama, and

(b) For which offers are anticipated from, or contracts are awarded to, U.S. contractors.

PART 3529—TAXES

Subpart 3529.4—Contract Clauses

3529.402 Foreign contracts.
3529.402–1 Foreign fixed-price contracts.

AUTHORITY: 40 U.S.C. 486(c); Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively.

Subpart 3529.4—Contract Clauses

3529.402 Foreign contracts.

3529.402–1 Foreign fixed-price contracts.

(a) *Procedures regarding FAR clause 52.229–6.* In recognition of the fundamental purpose of paragraph 2(e) of Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively, representatives of the Governments of the United States and Panama approved an Agreement on Taxation of Contractors on August 6, 1986. This taxation agreement impacts on U.S. contractors in certain circumstances. In order to alert prospective contractors to this possibility, the following procedures shall apply regarding FAR clause 52.229–6:

(1) The contracting officer shall supplement FAR clause 52.229–6, Taxes—Foreign Fixed-Price Contracts, by inserting the following note at the end of the clause in all solicitations and contracts, unless the acquisition is a small purchase under FAR part 13 that:

(i) Will not require the contractor's presence in Panama, or

(ii) Does not solicit U.S. offerors:

NOTE: If the Contractor is a U.S. contractor, such contractor is advised that, pursuant to a taxation agreement between the Governments of the United States and Panama, U.S. contractors and subcontractors, including their U.S. citizen or U.S. permanent resident employees, may be required to file tax returns with, as well as provide corresponding U.S. tax information to, the Government of Panama on income arising under or relating to Panama Canal Commission

contracts. This requirement is applicable when the contractor, subcontractor, or individual employee is present in the Republic of Panama in connection with one or more Commission contracts for more than 90 calendar days during the relevant tax year. This description of the stated requirement is not intended, nor should it be construed, to be a legal analysis of the taxation agreement. The Commission assumes no responsibility or liability for a contractor's or individual's obligation under the taxation agreement, nor for the interpretation of such agreement. A copy of the taxation agreement will be provided to the contractor or prospective contractor upon request to the contracting officer.

(2) If clause 52.229–6 is incorporated by reference, rather than in full text, insert the note directly below the title of the clause.

(3) Include elsewhere in the body of the solicitation the following note to alert offerors that clause 52.229–6 has been supplemented. In supply and service solicitations, this note should normally be inserted in Section B following the blanks provided for offerors to insert line item prices. In construction solicitations, the note should normally be attached to Standard Form 1442 or inserted in the solicitation's Special Conditions. In small purchase acquisitions, the note is to be included in the document requesting prices or by separate attachment to the document. If a U.S. contractor wins the small purchase award, the note shall be incorporated either (i) in full text, or (ii) by reference, on the purchase order or other award document.

NOTE: Offerors' attention is directed to the note added at the end of clause 52.229–6, Taxes—Foreign Fixed-Price Contracts. The note is an advisory notice regarding possible tax obligations under certain circumstances of U.S. contractors, subcontractors, and their employees to the Government of Panama. If the circumstances appear to be applicable, offerors may obtain additional information by contacting the contracting office at the address or phone number provided elsewhere in this solicitation.

(4) If additional information regarding the taxation agreement is requested of Panama Canal Commission employees, either before or after award, the individual who receives the request shall promptly notify the contracting officer and the Office of General Counsel who shall determine, in conjunction with the Office of Executive Administration, the appropriate action to be taken.

(5) Contracting officers shall serve as the official liaison, for purposes of the taxation agreement, between offerors/contractors and the Commission. The taxation agreement provides for the classification of contractors into two categories, resident and non-resident, by representatives of the Governments of the United States and Panama according to criteria set forth in the agreement. The representative of the United States Government is the Assistant Director, Policy and Programs, Office of Executive Administration. Classifications, when confirmed by the two representatives, will be communicated to the respective contractors by the contracting officer.

[55 FR 7657, Mar. 2, 1990]

PART 3531—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3531.2—Contracts with Commercial Organizations

3531.205–46 Travel costs.

(a) Fixed-price type contracts that provide for separate reimbursement of travel and per diem shall state that such reimbursement will not exceed rates established in applicable Federal Travel Regulations.

(b) The clause at 3552.231–70, Travel Costs, shall be included in contracts as described in paragraph (a) of this subsection.

[55 FR 7658, Mar 2, 1990]

PART 3532—CONTRACT FINANCING

Sec.

3532.000 Scope of part.

Subpart 3532.1—General

3532.111 Contract clauses.

Subpart 3532.4—Advance Payments

3532.402 General.
3532.407 Interest.

Subpart 3532.6—Contract Debts

3532.600 Scope of subpart.
3532.601 Definition.
3532.602 General.
3532.603 Applicability.
3532.608 Negotiation of contract debts.
3532.608–70 Procedures.
3532.610 Demand for payment of contract debt.

Subpart 3532.7—Contract Funding

3532.705 Contract clauses.
3532.705–1 Clauses for contracting in advance of funds.

Subpart 3532.8—Assignment of Claims

3532.802 Conditions.
3532.806 Contract clause.

Subpart 3532.9—Prompt Payment

3532.901 Applicability.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7658, Mar. 2, 1990, unless otherwise noted.

3532.000 Scope of part.

This part implements and supplements FAR part 32 and provides Commission policies and procedures for contract financing and other payment matters, including—

(a) Advance payments;

(b) Contract debts;

(c) Assignment of claims; and

(d) Prompt payment implementation.

Subpart 3532.1—General

3532.111 Contract clauses.

(a)(7) The clause at 3552.232–70, Contract Payments, in solicitations and contracts for construction when the contracting officer determines that the value of materials delivered to the work site may be taken into account in preparing the progress payment estimate.

(8) The clause at 3552.232–73, Invoices, in all solicitations and contracts except small purchases. The clause or a modified version of the clause may be used in small purchases.

Subpart 3532.4—Advance Payments

3532.402 General.

(e)(1) The Procurement Executive is responsible for approving findings and determinations supporting the use of advance payments and approving contract terms concerning advance payments. These approvals must have the concurrence of the General Counsel.

(2) The contracting officer shall coordinate proposed advance payment authorizations with the Accounting Division.

3532.407 Interest.

(d) The Procurement Executive is authorized to approve advance payments without interest.

Subpart 3532.6—Contract Debts

3532.600 Scope of subpart.

This subpart assigns responsibilities and provides procedures for the collection of contract debts, including collection of debts under contracts for the transportation of household goods.

3532.601 Definition.

Responsible official, as used in this subpart, means the contracting officer.

3532.602 General.

In addition to the examples cited in FAR 32.602, contract debts may include those arising from claims under contracts for the transportation of household goods.

3532.603 Applicability.

When the Commission withholds payments due a contractor to satisfy a contractor's debt to the Government, the Debt Collection Act of 1982 and FAR subpart 32.6 apply. As a claim arising under a Government contract, any offset is governed by the Contract Disputes Act of 1979.

3532.608 Negotiation of contract debts.

3532.608–70 Procedures.

The Commission shall adhere to the following procedures prior to withholding a payment due a contractor to satisfy a debt owed by the contractor.

(a) The Commission shall use all proper means available for collecting a contract debt as rapidly as possible. This includes direct communication to obtain full payment or to negotiate an appropriate settlement.

(b) If the contractor fails to respond expeditiously and in good faith to contacts from the contracting officer, and if justifiable under the contract, the contracting officer shall promptly make a unilateral determination of the amount the contractor owes the Commission. The unilateral debt determination is made when neither payment nor a settlement has been reached. The unilateral debt determination is issued to the contractor by the contracting officer as a final decision under the Contract Disputes Act.

(c) A demand for payment of the contract debt shall be made contemporaneously with the contracting officer's issuance of the unilateral debt determination to the contractor.

3532.610 Demand for payment of contract debt.

(b) Demands for payment shall include, in addition to those items listed in FAR 32.610(b), the following:

(1) The offer of an opportunity to inspect and copy the records of the Commission related to the debt, 31 U.S.C. 3716(a)(2).

(2) The offer of an opportunity of a review of the Commission's decision relating to the debt, 31 U.S.C. 3716(3).

(3) The offer of an opportunity to enter into an agreement with the Commission to repay the amount of the debt.

(c) With respect to contracts for the transportation of household goods, claims by employees and, in turn, by the Commission, must be processed in a timely manner. The usual commercial terms for bills of lading require that any claim be filed against the contractor within nine months of shipment delivery. Government bills of lading are subject to these same rules and conditions. FAR clause 52.247–23, which is included in contracts for the transportation of household goods, specifies that the contractors will be notified of any damages within a maximum of 45 days from date of delivery.

Subpart 3532.7—Contract Funding

3532.705 Contract clauses.

3532.705–1 Clauses for contracting in advance of funds.

In lieu of either of the clauses prescribed at FAR 32.705–1(a) and (b), the contracting officer may insert the clause at 3552.232–71, Availability of Funds, in solicitations and contracts—

(a) That are to be awarded in one fiscal year with performance to begin in the following fiscal year, or

(b) That are to extend into the following fiscal year, or

(c) In situations when the circumstances in paragraphs (a) and (b) of this subsection both apply.

Subpart 3532.8—Assignment of Claims

3532.802 Conditions.

(b) Panamanian firms may assign contracts to a local bank in accordance with recognized local banking practice.

3532.806 Contract clause.

(a) In addition to the clauses prescribed in FAR 32.806, the contracting officer may insert the clause at 3552.232–72, Presentation of Statement of Release from Claims, in solicitations and contracts when appropriate, unless the contract will prohibit the assignment of claims.

Subpart 3532.9—Prompt Payment

3532.901 Applicability.

In consonance with subpart 3570.1, Panamanian Preference, the Administrator has determined, pursuant to FAR 32.904, to extend coverage of the interest penalty provisions of FAR subpart 32.9 to contracts awarded to Commission vendors located in the Republic of Panama.

PART 3533—PROTESTS, DISPUTES, AND APPEALS

Sec.
3533.000 Scope of part.

Subpart 3533.1—Protests

3533.103 Protests to the agency.
3533.104 Protests to GAO.

Subpart 3533.2—Disputes and Appeals

3533.203 Applicability.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7659, Mar. 2, 1990, unless otherwise noted.

3533.000 Scope of part.

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

Subpart 3533.1—Protests

3533.103 Protests to the agency.

(a) The cognizant Head of the Contracting Activity is the official designated to make the determination(s) required by FAR 33.103(a)(1), (2), or (3) whenever an award is contemplated notwithstanding the protest to the agency.

(c)(1) Protests to the Commission based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed with the contracting officer prior to bid opening or the closing date for receipt of initial proposals, or any extended bid opening or closing date for receipt of proposals.

(2) All other protests to the Commission shall be filed with the contracting officer not later than 10 working days after the basis of the protest is known or should have been known.

(d) The General Counsel shall review protests to the Commission as a matter of first priority, and advise the contracting officer expeditiously.

(e) The contracting officer shall decide protests to the Commission within 10 working days from receipt of a protest and promptly inform the protestor and other interested parties of that decision.

3533.104 Protests to GAO.

(a) *General.* Protests to the General Accounting Office (GAO) concerning Commission acquisitions shall be processed in accordance with FAR 33.104. The General Counsel shall prepare the report to GAO required at FAR 33.104(a)(5) and shall serve as the designated contact office for GAO. The contracting officer shall review protests to GAO as a matter of first priority, and shall advise, support, and furnish information to the General Counsel expeditiously.

Subpart 3533.2—Disputes and Appeals

3533.203 Applicability.

Pursuant to an interagency agreement between the Panama Canal Commission and the Corps of Engineers Board of Contract Appeals (ENGBCA), the ENGBCA will hear appeals from final decisions of Commission contracting officers issued pursuant to the Contract Disputes Act.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3536—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

Subpart 3536.1—General

Sec.
3536.101 Applicability.
3536.103 Methods of contracting.

Subpart 3536.2—Special Aspects of Contracting for Construction

3536.201 Evaluation of contractor performance.
3536.203 Government estimate of construction costs.
3536.207 Pricing fixed-price construction contracts.
3536.207–70 Use of indefinite delivery contracts.
3536.209 Construction contracts with architect-engineer firms.
3536.270 Special aspects of contracting for construction in Panama.
3536.270–1 General.
3536.270–2 Special contract considerations.

Subpart 3536.3—Special Aspects of Sealed Bidding in Construction Contracting

3536.303 Invitations for bids.
3536.370 Additive items.
3536.371 Solicitation provisions.

Subpart 3536.5—Contract Clauses and Form

3536.570 Special Panama Canal Commission contract clauses.
3536.571 Special Panama Canal Commission form.

Subpart 3536.6—Architect-Engineer Services

3536.602 Selection of firms for architect-engineer contracts.
3536.602–2 Evaluation boards.
3536.602–4 Selection authority.
3536.602–5 Short selection processes for contracts not to exceed $10,000.
3536.604 Performance evaluation.
3536.605 Government cost estimate for architect-engineer work.
3536.606 Negotiations.
3536.606–70 Modifications.
3536.670 Government rights to plans, specifications, and drawings.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7660, Mar. 2, 1990, unless otherwise noted.

Subpart 3536.1—General

3536.101 Applicability.

(a) Construction, which includes alteration, maintenance, and repair of real property, 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 3536 shall take precedence if the acquisition of architect-engineer services is involved.

3536.103 Methods of contracting.

(a) Notwithstanding the exception in FAR 36.103(a) for contracts to be performed outside the United States, construction in Panama shall be acquired using sealed bid procedures, unless one of the four conditions in FAR 6.401(a) cannot be met. In that event, the contracting officer shall document the contract file in accordance with FAR 6.401.

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, FAR subpart 36.6, and subpart 3536.6 of this regulation.

Subpart 3536.2—Special Aspects of Contracting for Construction

3536.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* The authorized representative of the contracting officer (COR) shall prepare the contractor performance report prescribed in FAR 36.201 within two weeks after final acceptance of the work or contract termination. Prior to submitting any report of unsatisfactory performance to the reviewing official, the COR shall advise the contractor of any proposed unsatisfactory rating and include any written comments from the contractor regarding such rating in the report (see FAR 36.201(a)(3)).

(b) *Review of performance reports.* The contracting officer shall review each performance report.

(c) *Distribution and use of performance reports.* Information from the performance report shall not be released outside of the Commission, except to other Government agencies at their written request, and on condition that the information will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with 35 CFR part 9.

3536.203 Government estimate of construction costs.

(c) The overall amount of the Government's estimate shall not be disclosed prior to award under any circumstance to persons other than Commission personnel whose official duties, as determined by the contracting officer, require knowledge of the estimate.

3536.207 Pricing fixed-price construction contracts.

3536.207–70 Use of indefinite-delivery contracts.

Any of the forms of indefinite-delivery contracts described in FAR subpart 16.5 may be used to contract for construction when deemed appropriate by the contracting officer.

3536.209 Construction contracts with architect-engineer firms.

No contract for construction shall be awarded to the firm, or its subsidiaries or affiliates, that designed the project except with the approval of the Head of Contracting Activity.

3536.270 Special aspects of contracting for construction in Panama.

3536.270–1 General.

In contracts which are entered into with Panamanian or other foreign contractors for performance in Panama, the term ''United States'' shall appear before the word ''Government.''

3536.270–2 Special contract considerations.

When construction is to be performed in the Republic of Panama by designated United States contractors, Panamanian contractors, or others, the solicitation and contract should include references to the applicable laws, regulations, treaties, and agreements of the United States and the Republic of Panama (see subpart 3525.8) relating to:

(a) The duty-free importation of material and equipment;

(b) The payment of taxes applicable to contractors, personnel, materials, and equipment (see parts 3525 and 3529);

(c) The applicability of workmen's compensation laws and other labor laws to citizens of the United States, citizens of Panama, and citizens of other countries (see subpart 3528.3);

(d) The provision of utility services;

(e) The provision of Commission or Government-owned materials or services;

(f) The disposition of surplus materials and equipment;

(g) The need for civil liability insurance for employees of contractors and subcontractors (see 3528.301);

(h) The handling of claims and litigation;

(i) The requirements for bid or proposal guarantees, performance bonds, and payment bonds (see subpart 3528.1);

(j) Acceptability of sureties not listed in Treasury Department Circular 570 (see subpart 3528.2);

(k) Consideration of Panamanian preference in accordance with part 3570;

(l) Any other special solicitation provisions prescribed in subpart 3536.3; and

(m) Any other problems which can be foreseen and appropriately resolved contractually.

Subpart 3536.3—Special Aspects of Sealed Bidding in Construction Contracting

3536.303 Invitations for bids.

3536.370 Additive items.

Prior to the issuance of an invitation for bids, the contracting officer shall ascertain that adequate funds have been certified as being available for the proposed acquisition. However, if funds

appear to be insufficient for all features of the Government's requirement, the contracting officer shall insert in the invitation a solicitation provision for a base bid and one or more additive items, as prescribed at 3536.371(a) (7) or (8).

3536.371 Solicitation provisions.

(a) The contracting officer shall insert the following provisions in invitations for bids for construction when applicable:

(1) The provision at 3552.214–70, Price—Sealed Bidding, as prescribed at 3514.201–6(a)(1);

(2) The provision at 3552.214–71, Additional Data To Be Submitted, as prescribed at 3514.201–6(b)(1);

(3) The provision at 3552.214–72, Rejection of Bids, as prescribed at 3514.201–6(b)(2);

(4) The provision at 3552.214–73, Caution—Sealed Bidding, as prescribed at 3514.201–6(a)(2);

(5) The provision at 3552.214–75, All or None Award—Sealed Bidding—Construction, as prescribed at 3514.201–6(d);

(6) The provision at 3552.236–70, Mailing of Correspondence and Bids, in all invitations for bids for construction;

(7) The provision at 3552.236–71, Additive Items, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in the numerical order of priority that the additive bid items appear in the bid schedule within the funds available;

(8) The provision at 3552.236–71, Additive Items—Alternate I, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in any combination within the funds available; and

(9) The provision at 3552.236–72, Cost Limitation, in invitations for bids for construction that contain one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

(b) The contracting officer shall insert the following provisions in negotiated solicitations for construction when applicable:

(1) The provision at 3552.215–70, Price, as prescribed at 3515.407(a)(1);

(2) The provision at 3552.215–71, Caution, as prescribed at 3515.407(a)(2); and

(3) The provision at 3552.215–72, All or None Award, as prescribed at 3515.407(b).

(c) The contracting officer shall insert the provision at 3552.209–70, Organizational Conflict of Interest Certification/Disclosure, in invitations for bids and negotiated solicitations for construction when applicable, as prescribed at 3509.508–1.

Subpart 3536.5—Contract Clauses and Form

3536.570 Special Panama Canal Commission contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for construction when applicable:

(a) The clause at 3552.225–70, Language, as prescribed at 3525.801–76(a);

(b) The clause at 3552.225–71, Notice of Applicability of United States Federal Law, as prescribed at 3525.801–76(b);

(c) The clause at 3552.225–72, Designated Contractors, as prescribed at 3525.801–76(c);

(d) The clause at 3552.225–73, Responsibility for Observance of Laws, Orders, and Regulations, as prescribed at 3525.801–76(d);

(e) The clause at 3552.228–70, Bid Guarantee Amount, or the clause at 3552.228–75, Proposal Guarantee, as prescribed at 3528.101–3(a). If the proposal guarantee clause is used, the bid guarantee clause at FAR 52.228–1 shall not be used (see 3528.101–3(b));

(f) The clause at 3552.228–71, Bonds and Insurance, as prescribed at 3528.102–3;

(g) The clause at 3552.228–72, Bonds, as prescribed at 3528.102–3;

(h) In addition to FAR clause 52.228–3, Workers' Compensation Insurance (Defense Base Act), the clause at 3552.228–73, Non-U.S. Workers' Compensation Insurance, as prescribed at 3528.309(a);

(i) The clause at 3552.228–74, Special Panama Insurance, as prescribed at 3528.370;

(j) In addition to FAR clause 52.232–5, Payments Under Fixed-Price Construction Contracts, the clause at 3552.232–70, Contract Payments, as prescribed at

3532.111(a)(7), the clause at 3552.232–72, Presentation of Statement of Release from Claims, as prescribed at 3532.806(a), and the clause at 3552.232–73, Invoices, as prescribed at 3532.111(a)(8);

(k) The clause at 3552.236–73, Scope of Work, in all solicitations and contracts for construction;

(l) In addition to FAR clause 52.236–10, Operations and Storage Areas, the clause at 3552.236–74, Work Sites, Yards, Shops, and Offices, when a fixed-price construction contract is contemplated;

(m) The clause at 3552.236–75, Work Time Limitations, in all solicitations and contracts for construction;

(n) In lieu of FAR clause 52.236–13, Accident Prevention, insert the clause at 3552.236–76, Accident Prevention, when a fixed-price construction contract is contemplated;

(o) The clause at 3552.236–77, Working in Confined Spaces, when the contracting officer anticipates that the contractor may have to work in confined or enclosed spaces;

(p) The clause at 3552.236–78, Safety Sign, when the contracting officer determines that the location of the work site warrants its inclusion;

(q) The clause at 3552.236–79, Protection of Material and Work, in all solicitations and contracts for construction;

(r) The clause at 3552.236–80, Toilet Facilities, when the contracting officer determines that the location of the work site warrants its inclusion;

(s) The clause at 3552.236–81, Drinking Water, when the contracting officer determines that the location of the work site warrants its inclusion;

(t) In addition to FAR clause 52.236–15, Schedules for Construction Contracts, the clause at 3552.236–82, Contract Bid Breakdown, when a fixed-price construction contract is contemplated and the period of actual work performance is expected to exceed 60 days;

(u) In addition to FAR clause 52.236–21, Specifications and Drawings for Construction, and FAR clause 52.236–5, Material and Workmanship, the clauses at: 3552.236–83, Descriptive Data and Correspondence, 3552.236–84, Instruction Books, and 3552.236–85, Record Drawings, when a fixed-price construction contract is contemplated;

(v) The clause at 3552.236–86, Restricted Areas, when the contracting officer anticipates that any portion of the contract work may have to be performed in a restricted area;

(w) The clause at 3552.243–70, Modification Proposals—Price Breakdown, as prescribed at 3543.205;

(x) The clause at 3552.244–70, Subcontractors, in all solicitations and contracts for construction;

(y) The clause at 3552.236–87, Surplus Space, in all solicitations and contracts for construction. The clause may also be used in solicitations and contracts for supplies or services if the contracting officer determines that its use is appropriate.

(z) The clause at 3552.209–71, Organizational Conflict of Interest, as prescribed at 3509.508–2.

3536.571 Special Panama Canal Commission form.

Panama Canal Form 3062, Submittal Data For Approval, shall be used by contractors as a transmittal document when data and/or samples are to be submitted for the contracting officer's approval pursuant to FAR clause 52.236–5 or clause 3552.236–83 of this regulation.

Subpart 3536.6—Architect-Engineer Services

3536.602 Selection of firms for architect-engineer contracts.

3536.602–2 Evaluation boards.

(a) The Panama Canal Commission Architect-Engineer Evaluation Board is established as a central board within the Commission under authority delegated to the Director, Engineering and Construction Bureau. The Board shall perform all Commission architect-engineer evaluations, data collection, and files maintenance. The Commission Board shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Board:

(1) Member and Chairman—A designee of the Chief, Engineering Division;

(2) Member—A professional engineer or architect from a division of one of the Commission's other bureaus, to be designated by the Chairman;

(3) Member—A program official initiating the requirement or a designated representative; and

(4) Advisory Member—A contracting officer or representative.

(b) The Chief, Engineering Division may appoint additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairman, an alternate experienced in architecture, engineering, or construction to serve in the member's absence.

(d) The duties of the advisory member shall include, but not be limited to, assuring that—

(1) The criteria set forth in the public notice are applied in the evaluation process; and

(2) Actions taken during the evaluation process do not compromise subsequent procurement actions.

3536.602–4 Selection authority.

The Director, Engineering and Construction Bureau shall serve as the Commission's selection authority for the evaluation board.

3536.602–5 Short selection processes for contracts not to exceed $10,000.

Both short selection processes permitted by FAR 36.602–5 are authorized.

3536.604 Performance evaluation.

Evaluation of architect-engineer contracts shall be in accordance with the procedures prescribed in 3536.201, except that SF 1421, Performance Evaluation (Architect-Engineer), shall be used in lieu of SF 1420, and that a copy of the performance evaluation shall be provided to the Architect-Engineer Evaluation Board for its files pursuant to FAR 36.604(c).

3536.605 Government cost estimate for architect-engineer work.

(b) The overall amount of the Government's cost estimate shall not be disclosed under any circumstance to persons other than Government personnel whose official duties, in the judgment of the contracting officer, require knowledge of the estimate.

3536.606 Negotiations.

(a) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, has been obtained. When the negotiations result in a price in excess of the Government estimate, as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(1) In no event shall a contract for architect-engineer services for the preparation of designs, plans, drawings and specifications exceed the statutory limitation of six percent (6 percent) of the estimated construction costs of the project. If the contract also covers any type of services other than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6 percent) limitation.

3536.606–70 Modifications.

When a modification involves work not initially included in the contract, the limitation on the total contract price set forth in 3536.606(a)(1) is applicable, as applied to the revised total estimated construction costs. When redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6 percent) statutory limitation is not exceeded:

(a) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(b) The contract cost for the original design will be added to the contract cost for redesign; and

(c) The total contract design cost obtained by paragraph (b) of this subsection will be divided by the total construction cost obtained by paragraph (a) of this subsection. The resulting percentage may not exceed the six percent (6 percent) statutory limitation.

3536.670 Government rights to plans, specifications, and drawings.

All solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those involving ''standard types of construction'', shall contain the clause at 3552.227–70, Government Rights, as prescribed at 3527.304–3(b).

PART 3537—SERVICE CONTRACTING

Sec.
3537.000 Scope of part.

Subpart 3537.1—Service Contracts—General

3537.102 Policy.
3537.104 Personal services contracts.
3537.104–70 Procedures.

Subpart 3537.2—Advisory and Assistance Services

3537.200 Scope of subpart.
3537.202 Policy.
3537.204 Exclusions.
3537.206 Requesting activity responsibilities.
3537.206–70 Procedures.
3537.270 Duration.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7662, Mar. 2, 1990, unless otherwise noted.

3537.000 Scope of part.

This part implements FAR part 37 and provides additional Commission policies and procedures for the acquisition of personal and nonpersonal services, including advisory and assistance services.

Subpart 3537.1—Service Contracts—General

3537.102 Policy.

(a) The Commission's policy regarding the contracting out of commercial services is set forth at 3507.301.

3537.104 Personal services contracts.

(b) Authority for the acquisition by contract of the personal services of experts and consultants is found at 5 U.S.C. 3109 which provides that, when authorized by an appropriation or other statute, the head of an agency may acquire by contract the temporary (not to exceed one year) or intermittent services of experts or consultants. For the purpose of this section, the terms ''experts'' and ''consultants'' are not interchangeable. Consequently, their meanings are distinguishable from the meaning of the collective term ''Individual experts and consultants'' at FAR 37.203(a). As used herein, an ''expert'' is an individual who is a recognized professional or highly skilled practitioner normally used to perform or supervise an operating function, rather than to provide advisory or consulting services. A ''consultant'', as used herein, is an individual possessing special, current knowledge or skill who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function. Acquiring the personal services of individual experts or consultants shall be subject to the limitations applicable to advisory and assistance services at FAR 37.202(c). In addition, the services of individual experts and consultants shall be acquired through personal services contracts only—

(1) When the services required cannot be obtained by appointment in accordance with standard Commission personnel procedures, and

(2) If the nature of the duties to be performed is temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no such contract shall be entered into for longer than one year at a time.

3537.104–70 Procedures.

Requests for the acquisition of personal services should include:

(a) A description of the services to be performed;

(b) Name and address of the person or firm;

(c) Background material to show the unique qualifications of such person or firm to accomplish the requirement;

(d) Place where the duties are to be performed and the period of service;

(e) The estimated cost; and

(f) Determinations that:

(1) It is not feasible to obtain personnel with the necessary skills through

standard Commission personnel appointment procedures;

(2) A nonpersonal services contract is not practicable; and

(3) Existing staffing is inadequate to furnish the services.

Subpart 3537.2—Advisory and Assistance Services

3537.200 Scope of subpart.

This subpart provides additional policy and management controls for the acquisition of personal and nonpersonal advisory and assistance services.

3537.202 Policy.

(d) The acquisition of advisory and assistance services shall conform to the Competition in Contracting Act of 1984. Preference shall, however, be given to sources located in the Republic of Panama when the services are available as required and are comparable in quality and price to those which may be obtained from other sources (see part 3570). However, see subpart 3503.6 concerning contracts with current or former Commission employees.

3537.204 Exclusions.

In addition to the exclusions or exemptions identified at FAR 37.204, the services of arbitrators for the resolution of labor disputes are exempted from the definition of advisory and assistance services. As authorized by section 7121 of the Federal Service Labor-Management Relations Act, 5 U.S.C. 7121, the procedure for the contracting of arbitrators shall be governed by the negotiated grievance procedure set forth in the individual collective bargaining agreements between the Commission and the various certified representatives (i.e., unions).

3537.206 Requesting activity responsibilities.

(c) Requests for the acquisition of advisory and assistance services shall include the documentation required at FAR 37.206 (a), (b), and (d), and shall be prepared by the initiating bureau director or head of independent unit and forwarded to the Administrator for approval, through, in turn, the Personnel Director; General Counsel; Chief Financial Officer; and the General Services Director for their review and concurrence. Before the proposal is routed to the Administrator, the General Services Director will add the cognizant contracting officer's determination as to whether or not the requested acquisition constitutes advisory and assistance services as described in FAR subpart 37.2. As mandated by FAR 37.207, the contracting officer's determination shall be final.

[55 FR 7662, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3537.206–70 Procedures.

(a) When a request has been approved pursuant to 3537.206(c), the initiating bureau director or head of independent unit shall—

(1) Forward all papers to the cognizant contracting officer for processing the contract action. If not already included in the request for approval, the forwarding official shall provide the contracting officer with a work statement that is specific and complete, including: a detailed description of services to be performed; the place where the services are to be performed; the period of performance; the names and addresses of potential contractors (if applicable); and any other information the contracting officer considers to be pertinent.

(2) Coordinate with the Director, Office of Executive Administration or the contracting officer, as applicable, to obtain certification as a Panama Canal Commission designated contractor, entry/exit permits, identification cards, and any other required legal documents.

(3) Prepare replies to all inquiries from the General Accounting Office, the Office of Management and Budget, and the Congress, in coordination with the Personnel Director, Chief Financial Officer, General Counsel and the contracting officer, as may be necessary.

(b) At the conclusion of the contract, the initiating bureau director or head of independent unit shall furnish to the contracting officer the written evaluation required at FAR 37.205.

3537.270 Duration.

No contract for advisory and assistance services shall be entered into for

longer than one year at a time. In unusual circumstances, and when approved by the Administrator, options for additional one-year extensions may be used when the need for continuity of services carries beyond a one-year period. In no case shall the total period under a specific contract exceed the basic year plus four additional optional years.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 3542—CONTRACT ADMINISTRATION

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3542.12—Novation and Change-of-Name Agreements

3542.1200–70 Policy.

When ''CORPORATE SEALS,'' as required in the instructions for preparation and execution of novation agreements in FAR 42.1204 and in agreements to recognize contractor's change of name in FAR 42.1205, are not used due to the dictates of custom, practice, or law within the Republic of Panama or other foreign countries, the contracting officer may execute such agreements, provided the contracting officer, with the concurrence of legal counsel, is satisfied that the persons signing such agreements are authorized to bind their companies.

[55 FR 7663, Mar. 2, 1990]

PART 3543—CONTRACT MODIFICATIONS

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3543.2—Change Orders

3543.205 Contract clauses.

The contracting officer shall insert the clause at 3552.243–70, Modification Proposals—Price Breakdown, in all solicitations and contracts for construction.

[55 FR 7664, Mar. 2, 1990]

PART 3547—TRANSPORTATION

Subpart 3547.3—Transportation in Supply Contracts

Sec.
3547.306 Transportation factors in the evaluation of offers.
3547.370 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

Subpart 3547.3—Transportation in Supply Contracts

3547.306 Transportation factors in the evaluation of offers.

For purposes of evaluating comparability of costs of supplies obtainable in the Republic of Panama with those obtainable from other sources, pursuant to the Panamanian preference provisions of the Panama Canal Treaty's Implementing Agreement (see part 3570), consideration shall be given to transportation costs to the Republic of Panama, including freight, insurance and handling of supplies.

[55 FR 7664, Mar. 2, 1990]

3547.370 Solicitation provision.

The contracting officer shall insert the provision at 3552.247–70, Evaluation of Delivery Terms in Contract Awards, in solicitations that include alternate terms of delivery, i.e., f.o.b. destination (New Orleans) and c.i.f. destination (Panama).

[55 FR 7664, Mar. 2, 1990]

PART 3551—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 3551.1—Contractor Use of Government Supply Sources

Sec.
3551.102 Authorization to use Government supply sources.
3551.103 Ordering from Government supply sources.

AUTHORITY: 40 U.S.C. 486(c).

Subpart 3551.1—Contractor Use of Government Supply Sources

3551.102 Authorization to use Government supply sources.

(a) When a contractor is performing one of the types of contracts specified in FAR 51.101, the contracting officer shall consider whether to allow the contractor to use Government supply sources. In addition to the factors listed for consideration at FAR 51.102(a),

the contracting officer shall consider whether—

(1) Materials necessary to the performance of the contract are not available locally except at Government sources; and

(2) Materials, though available to the contractor, require such a long lead time for delivery that contractor performance is threatened if Government sources are not used.

(e)(4) In those instances where contractor-furnished equipment and materials required by a contract have been authorized by the contracting officer to be obtained through Government sources as Government-furnished equipment and materials, for reasons established by FAR part 51, the contracting officer shall negotiate a change to the contract reducing the price by the commercial cost plus transportation costs.

[55 FR 7664, Mar. 2, 1990]

3551.103 Ordering from Government supply sources.

(b) ''Contracting agency'' as used in FAR 51.103(b) shall mean the cognizant Commission contracting officer.

[55 FR 7664, Mar. 2, 1990]

SUBCHAPTER H—CLAUSES AND FORMS

PART 3552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3552.2—Texts of Provisions and Clauses

Sec.
3552.209–70 Organizational Conflict of Interest Certification/Disclosure.
3552.209–71 Organizational Conflict of Interest.
3552.210–70 Brand Name Products or Equal.
3552.214–70 Price—Sealed Bidding.
3552.214–71 Additional Data To Be Submitted.
3552.214–72 Rejection of Bids.
3552.214–73 Caution—Sealed Bidding.
3552.214–74 All or None Award—Sealed Bidding.
3552.214–75 All or None Award—Sealed Bidding—Construction.
3552.215–70 Price.
3552.215–71 Caution.
3552.215–72 All or None Award.
3552.225–70 Language.
3552.225–71 Notice of Applicability of United States Federal Law.
3552.225–72 Designated Contractors.
3552.225–73 Responsibility for Observance of Laws, Orders, and Regulations.
3552.227–70 Government Rights.
3552.228–70 Bid Guarantee Amount.
3552.228–71 Bonds and Insurance.
3552.228–72 Bonds.
3552.228–73 Non-U.S. Workers' Compensation Insurance.
3552.228–74 Special Panama Insurance.
3552.228–75 Proposal Guarantee.
3552.228–76 Performance Bond.
3552.228–77 Performance and Payment Bonds.
3552.231–70 Travel Costs.
3552.232–70 Contract Payments.
3552.232–71 Availability of Funds.
3552.232–72 Presentation of Statement of Release From Claims.
3552.232–73 Invoices.
3552.236–70 Mailing of Correspondence and Bids.
3552.236–71 Additive Items.
3552.236–72 Cost Limitation.
3552.236–73 Scope of Work.
3552.236–74 Work Sites, Yards, Shops, and Offices.
3552.236–75 Work Time Limitations.
3552.236–76 Accident Prevention.
3552.236–77 Working in Confined Spaces.
3552.236–78 Safety Sign.
3552.236–79 Protection of Material and Work.
3552.236–80 Toilet Facilities.
3552.236–81 Drinking Water.
3552.236–82 Contract Bid Breakdown.
3552.236–83 Descriptive Data and Correspondence.
3552.236–84 Instruction Books.
3552.236–85 Record Drawings.
3552.236–86 Restricted Areas.
3552.236–87 Surplus Space.
3552.243–70 Modification Proposals—Price Breakdown.
3552.244–70 Subcontractors.
3552.247–70 Evaluation of Delivery Terms in Contract Awards.

AUTHORITY: 40 U.S.C. 486(c); Articles IX and XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7664, Mar. 2, 1990, unless otherwise noted.

Subpart 3552.2—Texts of Provisions and Clauses

3552.209–70 Organizational Conflict of Interest Certification/Disclosure.

As prescribed in 3509.508–1, insert the following provision:

ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION/DISCLOSURE (JAN 1990)

(a) An ''organizational conflict of interest'' exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (1) result in an unfair competitive advantage to the contractor, or (2) impair the contractor's objectivity in performing the contract work.

(b) The offeror certifies, to the best of its knowledge and belief, that it [ ] is, [ ] is not (check applicable block) aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement with its offer which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(c) The offeror should refer to FAR subpart 9.5 and PAR subpart 3509.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(d) If the Contracting Officer determines that a potential conflict exists, the offeror shall not receive an award unless the conflict

can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

3552.209–71 Organizational Conflict of Interest.

As prescribed in 3509.508–2, insert the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST (JAN 1990)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief: (1) There are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in provision 3552.209–70, Organizational Conflict of Interest Certification/Disclosure, of the solicitation; or (2) That the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies—The Panama Canal Commission may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, terms which shall conform substantially to the language of this clause, including this paragraph (d).

(End of clause)

3552.210–70 Brand Name Products or Equal.

As prescribed in 3510.011(h), insert the following provision:

BRAND NAME PRODUCTS OR EQUAL (JAN 1990)

(As used in this provision, the term ''brand name'' includes identification of products by make and model.)

(a) If items called for by this (*invitation for bids/request for proposals*) have been identified in the schedule by a ''brand name or equal'' description, such identification is characteristic of products that will be satisfactory. (*Bids/Proposals*) offering ''equal'' products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the (*bids/proposals*) and are determined by the Government to meet fully the salient characteristics, requirements listed in the invitation.

(b) Unless the (*bidder/offeror*) clearly indicates in its (*bid/proposal*) that it is offering an ''equal'' product, its (*bid/proposal*) shall be considered as offering a brand name product referenced in the (*invitation for bids/request for proposals).*

(c)(1) If the (*bidder/offeror*) proposes to furnish an ''equal'' product, the brand name, if any, of the product to be furnished shall be inserted in the space identified in the (*bid/proposal*). The evaluation of (*bids/proposals*) and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the (*bidder/offeror*) or identified in its (*bid/proposal*) as well as other information reasonably available to the purchasing activity. Caution to (*bidders/offerors*): the purchasing activity is not responsible for locating or securing any information which is not identified in the (*bid/proposal*) and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the (*bidder/offeror*) shall furnish as part of its (*bid/proposal*) all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirement of the (*invitation for bids/request for proposals*), and (ii) establish exactly what the (*bidder/offeror*) proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the (*bidder/offeror*) proposes to modify a product so as to make it conform to the requirements of the (*invitation for bids/request for proposals*). It shall (i) include in its (*bid/proposal*) a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after (*bid/proposal*) opening to make a product conform to a brand name product referenced in the (*invitation for bids/request for proposals*) will not be considered.

(End of provision)

3552.214–70 Price—Sealed Bidding.

As prescribed in 3514.201–6(a)(1), insert the following provision:

PRICE—SEALED BIDDING (JAN 1990)

Only bids stating a firm, fixed-price expressed in U.S. dollars shall be considered for award. Bids that qualify the bid price in terms of the rate of exchange between U.S. dollars and a foreign currency will be rejected as nonresponsive.

(End of provision)

3552.214–71 Additional Data To Be Submitted.

As prescribed in 3514.201–6(b)(1), insert the following provision:

ADDITIONAL DATA TO BE SUBMITTED (JAN 1990)

Prior to award of the contract, the Contracting Officer may require the apparent low bidder to furnish the following information:

(a) Evidence establishing that the bidder maintains a permanent place of business and has satisfactory and acceptable financial resources to meet obligations incident to the work.

(b) A brief description of work experience by the bidder and the location of major projects.

(c) A list of key personnel which the bidder has available for prosecution of the work to be performed, and a brief summary of such personnel's experience in work similar to that required by this contract.

(d) A complete list and description of all equipment, shops, yards, and storage facilities that the bidder now has or will have available for commencement and prosecution of the work.

(e) Evidence establishing that the bidder positively meets responsibility requirements, such as experience, which are included in the solicitation.

(End of provision)

3552.214–72 Rejection of Bids.

As prescribed in 3514.201–6(b)(2), insert the following provision:

REJECTION OF BIDS (JAN 1990)

Any bid will be rejected that is conditioned upon or proposes that the Panama Canal Commission agree to the use of a price adjustment clause calling for an upward revision of the bid price or to the use of a cost-plus-fixed-fee or comparable pricing arrangement. The right is reserved, as the interest of the Panama Canal Commission may require, to reject any and all bids and to waive any informality in the bids. A bid may be rejected if the bidder fails to furnish a guaranty and submit the data required with the bid; or if the bidder cannot show to the satisfaction of the Contracting Officer that it has the experience and owns or controls by firm option, or can procure the necessary plant to commence work within the time prescribed in the specifications and, thereafter, to prosecute and complete the work at the rate or time specified; or if the bidder cannot show that he is not already obligated to perform other work contemplated in this Solicitation. Any unbalanced bid which, in the opinion of the Contracting Officer, jeopardizes the interests of the Panama Canal Commission will be subject to rejection for that reason.

(End of provision)

3552.214–73 Caution—Sealed Bidding.

As prescribed in 3514.201–6(a)(2), insert the following provision:

CAUTION—SEALED BIDDING (JAN 1990)

Bidders are cautioned that any condition, qualification, provision, or comment in their bid, or in a letter transmitting their bid, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions, or provisions of this solicitation, may require the rejection of their bid as nonresponsive.

(End of provision)

3552.214–74 All or None Award—Sealed Bidding.

As prescribed in 3514.201–6(c), insert the following provision:

ALL OR NONE AWARD—SEALED BIDDING (JAN 1990)

Notwithstanding paragraph (c) of provision 52.214–10, Contract Award—Sealed Bidding, award will be made on an ''all or none'' basis to one bidder for all items, in the quantities and at the unit prices specified for each item. Consequently, for the purpose of determining the most advantageous bid in accordance with paragraph (a) of provision 52.214–10, the word ''price'' as used therein shall be construed to mean the bidder's aggregate price for all items. Any bid which fails to quote on all items, in the quantities specified for each item, shall be rejected as nonresponsive.

(End of provision)

3552.214–75 All or None Award—Sealed Bidding—Construction.

As prescribed in 3514.201–6(d)(1), insert the following provision:

ALL OR NONE AWARD—SEALED BIDDING—CONSTRUCTION (JAN 1990)

Regarding paragraph (c) of provision 52.214–19, Contract Award—Sealed Bidding—Construction, award will be made on an ''all or none'' basis to one bidder for all items. Consequently, for the purpose of determining the most advantageous bid in accordance with paragraph (a) of provision 52.214–19, the word ''price'' as used therein shall be construed to mean the bidder's aggregate price for all items. As indicated in paragraph (c) of provision 52.214–18, Preparation of Bids—Construction, failure to bid on all items will disqualify the bid.

(End of provision)

Alternate I (Jan 1990)

If the construction work is not estimated to exceed $10,000, substitute the following text in place of the basic text:

A contract award will be made on an ''all or none'' basis to one bidder for all items at the prices specified for each item. The award will be made, without discussions, to the overall low, responsible bidder whose bid, conforming to the solicitation, will be the most advantageous to the Government considering only the bidder's aggregate price for all items and the price-related factors, if any, specified elsewhere in the solicitation. Consequently, bidders are required to bid on all items. Failure to do so will disqualify the bid.

Alternate II (Jan 1990)

If the contracting officer determines that (a) the contract work, regardless of its estimated value, will be awarded to one bidder for all the work, and (b) bidding on all items will not be required, substitute the following text in place of the basic text:

A contract award will be made on an ''all or none'' basis to one bidder for all the contract work. The award will be made, without discussions, to the overall low, responsible bidder whose bid, conforming to the solicitation, will be the most advantageous to the Government considering only the bidder's aggregate price for all items and the price-related factors, if any, specified elsewhere in the solicitation.

3552.215–70 Price.

As prescribed in 3515.407(a)(1), insert the following provision:

PRICE (JAN 1990)

Only offers stating a firm-fixed-price expressed in U.S. dollars shall be considered for award. Offers that qualify the offer price in terms of the rate of exchange between U.S. dollars and a foreign currency will be rejected as nonresponsive.

(End of provision)

3552.215–71 Caution.

As prescribed in 3515.407(a)(2), insert the following provision:

CAUTION (JAN 1990)

Offerors are cautioned that any condition, qualification, provision, or comment in their offer, or in a letter transmitting their offer, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions, or provisions of this solicitation, may require the rejection of their offer as nonresponsive.

(End of provision)

3552.215–72 All or None Award.

As prescribed in 3515.407(b), insert the following provision:

ALL OR NONE AWARD (JAN 1990)

Notwithstanding paragraph (d) of provision 52.215–16, Contract Award, a contract award will be made on an ''all or none'' basis to one offeror for all items, in the quantities and at the unit prices specified for each item. Consequently, for the purpose of determining the most advantageous offer in accordance with paragraph (a) of provision 52.215–16, the words ''cost or price'' as used therein shall be construed to mean the offeror's aggregate cost or price for all items. Therefore, offerors are cautioned to quote on all items, in the quantities specified for each item. Failure to do so will, in effect, eliminate the offeror from consideration for contract award in the event a contract is to be awarded on the basis of initial offers received without discussions, pursuant to paragraph (c) of provision 52.215–16.

(End of provision)

3552.225–70 Language.

As prescribed in 3525.801–76(a), Language, insert the following clause:

LANGUAGE (JAN 1990)

All offers, correspondence and documents required by this solicitation or contract must be submitted in the English language. In the event of inconsistency between any terms of this solicitation or contract and

any translation thereof into another language, the English language meaning shall control.

(End of clause)

3552.225–71 Notice of Applicability of United States Federal Law.

As prescribed in 3525.801–76(b), insert the following clause:

NOTICE OF APPLICABILITY OF UNITED STATES FEDERAL LAW (JAN 1990)

All matters relating to the validity, construction, interpretation, performance and enforcement of the contract shall be determined in accordance with applicable federal law of the United States of America.

(End of clause)

3552.225–72 Designated Contractors.

As prescribed in 3525.801–76(c), insert the following clause:

DESIGNATED CONTRACTORS (JAN 1990)

Article XI, ''Contractors and Contractors' Personnel,'' of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, prescribes, among other things, that—

(a) Whenever contracts are awarded by the Commission to natural persons who are nationals or permanent residents of the United States or to corporations or other legal entities organized under the laws of the United States and under the effective control of such persons, such contractors shall be so designated by the United States and such designations shall be communicated to the authorities of the Republic of Panama.

(b) Designated contractors shall be subject to the laws and regulations of the Republic of Panama except with respect to the special provisions established by the above named international agreement, which enumerate such obligations and benefits as, among others:

(1) Designated contractors must, while in Panama, engage exclusively in the work for which they have been contracted by U.S. Government agencies; and,

(2) Designated contractors shall be accorded the same rights established for U.S. citizens employed by the U.S. Government in Panama pertaining to Panamanian immigration requirements, relief from the payment of certain Panamanian taxes and duties, and the use of certain facilities located on U.S. military installations in Panama.

(c) The provisions of Article XI shall be similarly applied to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be subject to the Panamanian Social Security System.

(d) Upon withdrawal of the designation of a contractor, the Commission shall notify the authorities of the Republic of Panama.

(End of clause)

3552.225–73 Responsibility for Observance of Laws, Orders, and Regulations.

As prescribed in 3525.801–76(d), insert the following clause:

RESPONSIBILITY FOR OBSERVANCE OF LAWS, ORDERS, AND REGULATIONS (JAN 1990)

The Contractor shall be responsible for complying with all applicable laws, regulations, standards and requirements, including traffic and vehicular laws and regulations, prescribed by the Republic of Panama for contractors performing work for the Panama Canal Commission (hereinafter referred to as the Commission). The Contractor shall similarly be responsible for complying with all laws, Executive Orders, and United States Government rules and regulations which the Commission, as an agency of the United States Government performing work in the Republic of Panama, is required to follow. The areas of legal competence have been agreed to between both countries pursuant to and in accordance with the Panama Canal Treaty of 1977, including such executive agreements and implementing legislation as may be in effect. Failure of the Contractor to familiarize himself with all laws, orders, rules, regulations or standards promulgated by either country, which are or may become applicable to the work under this contract, shall not constitute a basis for adjustments under the contract.

(End of clause)

3552.227–70 Government Rights.

As prescribed in 3527.304–3(b), insert the following clause:

GOVERNMENT RIGHTS (JAN 1990)

The Contractor may retain the entire right, title, and interest, throughout the world, to all drawings, designs, specifications, notes, and other works developed in the performance of this contract, provided that the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to have and to use same on any other Government design or construction, and provided that the Contractor shall execute or have executed, upon request, and shall promptly deliver to the Federal agency, all instruments necessary to establish or to confirm said license.

(End of clause)

3552.228–70 Bid Guarantee Amount.

As prescribed in 3528.101–3(a), insert the following clause:

BID GUARANTEE AMOUNT (JAN 1990)

(a) The amount of the bid guarantee required by clause 52.228–1, Bid Guarantee, shall be 20 percent of the total amount of the bid, excluding options and additives if any, or $3,000,000, whichever is less.

(b) If the bidder elects to furnish the guarantee in the form of a bid bond, the bond shall be submitted on Standard Form 24. Corporations executing the bond as sureties must be among those appearing on the current U.S. Treasury Department Circular 570, entitled ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies'', and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(End of clause)

3552.228–71 Bonds and Insurance.

As prescribed in 3528.102–3, insert the following clause:

BONDS AND INSURANCE (JAN 1990)

The bidder who is awarded the contract shall be required to furnish performance and payment bonds, certificates of Workman's Compensation, if required, and public liability and automobile insurance as stipulated in the General Conditions. The payment by the Commission of the bond premiums to the Contractor shall not be made as increments of the individual progress payments and shall not be in addition to the contract price.

(End of clause)

3552.228–72 Bonds.

As prescribed in 3528.102–3, insert the following clause:

BONDS (JAN 1990)

(a) Corporations executing the bond as sureties must be among those appearing either on the Panama Canal Commission's list of locally acceptable sureties or on the U.S. Treasury Department's Circular 570, and must be acting within the limitations set forth therein.

(b) *Payment Bond:* If the contract exceeds $2,000, the Contractor shall furnish a payment bond with good and sufficient surety or sureties acceptable to the Commission for the protection of persons furnishing material or labor in connection with the performance of the work under this contract on Standard Form 25–A. The penal sum of such payment bond shall be as follows: (1) When the contract price is $1,000,000 or less, 50 percent of the contract price; (2) when the contract price is in excess of $1,000,000, but no more than $5,000,000, 40 percent of the contract price; (3) or $2,500,000 when the contract price is more than $5,000,000.

(c) *Performance Bond:* If the contract exceeds $2,000, the Contractor shall furnish a performance bond with good and sufficient surety or sureties acceptable to the Commission in connection with the performance of the work under this agreement on Standard Form 25. The penal sum of such performance bond shall be 100 percent of the contract price.

(d) The bonds herein shall not be dated prior to the date of the contract and shall be furnished by the Contractor to the Commission not later than 10 calendar days after award.

(End of clause)

3552.228–73 Non-U.S. Workers' Compensation Insurance.

As prescribed in 3528.309(a), insert the following clause:

NON-U.S. WORKERS' COMPENSATION INSURANCE (JAN 1990)

(a) Pursuant to a waiver granted by the Secretary of Labor, the provisions of the Defense Base Act (see clause 52.228–3) are not applicable to any public-work contract awarded by the Panama Canal Commission in the Panama Canal area with respect to non-U.S. citizen employees of Commission contractors. The waiver does not apply, however, to such employees who are:

(1) Hired in the United States by any contractor; or

(2) Residents of the United States.

(b) The waiver was granted with the proviso that non-U.S. citizen employees exempted from the provisions of the Defense Base Act by virtue of the waiver will be provided workers' compensation benefits prescribed in the Panamanian Social Security System. Accordingly, the Contractor shall provide workmen's insurance coverage (Seguros de Riesgos Profesionales) as provided by the Panamanian Social Security System in accordance with Cabinet Decree No. 68 of March 31, 1970, for all non-U.S. citizen employees that are not covered by clause 52.228–3 of this contract. The Seguro de Riesgos Profesionales coverage shall be provided before the Contractor commences performance and shall be maintained until performance is completed.

(End of clause)

3552.228–74 Special Panama Insurance.

As prescribed in 3528.370, insert the following clause:

SPECIAL PANAMA INSURANCE (JAN 1990)

(a) ''Designated contractors'' shall, upon initiation of work or construction activities, obtain appropriate insurance to cover civil liabilities in the Republic of Panama that may arise as a result of acts or omissions done in the performance of official duty by their employees. The insurance coverage shall include coverage for the tortious conduct of their employees. Such insurance may be obtained from insurance companies licensed to engage in such business within the Republic of Panama.

(b) The Contractor shall include this clause in all subcontracts.

(End of clause)

3552.228–75 Proposal Guarantee.

As prescribed in 3528.101–3 (a) and (b), insert the following clause:

PROPOSAL GUARANTEE (JAN 1990)

(a) Failure to furnish a guarantee in the proper form and amount, by the time set for the receipt of offers, may be cause for rejection of the proposal.

(b) The offeror shall furnish a guarantee in the form of a firm commitment, such as a bid bond, 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 amount of this guarantee shall be 20 percent of the total amount of the proposal price, excluding options and additives if any, or $3,000,000, whichever is less. The Contracting Officer will return guarantees, other than bid bonds, (1) to unsuccessful offerors as soon as practicable after the completion of the evaluation process, and (2) to the successful offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the proposal as accepted.

(c) If the successful offeror, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) Unless otherwise specified in the proposal, the offeror will (1) allow 60 days for acceptance of its proposal, and (2) give bond within 10 days after receipt of the forms by the offeror.

(e) In the event the contract is terminated for default, the Contractor is liable for any cost of acquiring the work that exceeds the amount of its proposal, and the proposal guarantee is available to offset the difference.

(f) Regarding paragraph (b) of this clause, if a bid bond is furnished, it must be submitted on Standard Form 24. Corporations executing the bond as sureties must be among those appearing on the U.S. Treasury Department's Circular 570, entitled ''Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies'', and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(End of clause)

3552.228–76 Performance Bond.

As prescribed in 3528.103–70(a), insert the following clause:

PERFORMANCE BOND (JAN 1990)

(a) The Contractor shall furnish a performance bond with good and sufficient surety or sureties in connection with the work under this contract on Standard Form 25, which requires that the surety or sureties must be among those appearing on the current U.S. Treasury Department Circular 570 (published in the FEDERAL REGISTER), and any amendments thereto, and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570. The bond is to be completed in accordance with the instructions on the reverse side of Standard Form 25.

(b) The penal sum of such performance bond shall be 100 percent of the contract price. The bond must not be dated prior to the date of the contract and shall be furnished by the Contractor to the Contracting Officer not later than 30 calendar days after the date of receipt by the Contractor of notice of award of the contract. As used in Standard Form 25, the term ''Government'' shall mean the ''Panama Canal Commission''.

(c) Under the terms of Standard Form 25 and this contract, the penal obligation specified in paragraph (b) of this clause shall be in

effect during the life of the contract and during all warranty periods stipulated in the contract.

(End of clause)

3552.228–77 Performance and Payment Bonds.

As prescribed in 3528.103–70 (a) and (b), insert the following clause:

PERFORMANCE AND PAYMENT BONDS (JAN 1990)

(a) *General.* (1) The bonds required by paragraphs (b) and (c) of this clause are to be completed in accordance with the instructions on the reverse side of the respective bond forms. Corporations executing the bonds as sureties must be among those appearing on the current U.S. Treasury Department Circular 570 (published in the FEDERAL REGISTER), and any amendments thereto, and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(2) The bonds must not be dated prior to the date of the contract and shall be furnished by the Contractor to the Contracting Officer not later than 30 calendar days after the date of receipt by the Contractor of notice of award of the contract.

(b) *Performance Bond.* The Contractor shall furnish a performance bond on Standard Form 25 in connection with the performance of the work under this contract. The penal sum of such bond shall be 100 percent of the contract price.

(c) *Payment Bond.* The Contractor shall furnish a payment bond on Standard Form 1416 for the protection of persons furnishing material and/or labor in the prosecution of the contract. The penal sum of such bond shall be as follows: (1) 50 percent of the contract price if such price is not more than $1,000,000; (2) 40 percent of the contract price if such price is more than $1,000,000 but not more than $5,000,000; or (3) $2,500,000 if the contract price is more than $5,000,000.

(End of clause)

3552.231–70 Travel Costs.

As prescribed in 3531.205–46(b), insert the following clause:

TRAVEL COSTS (JAN 1990)

Costs incurred by the Contractor for travel and per diem in the performance of this contract that are authorized elsewhere in this contract shall be reimbursed to the Contractor in accordance with the Federal Travel Regulations, prescribed by the General Services Administration, in effect on the dates of performance of this contract.

(End of clause)

3552.232–70 Contract Payments.

As prescribed in 3532.111(a)7, insert the following clause:

CONTRACT PAYMENTS (JAN 1990)

(a) Contract payments, unless otherwise specified, will be made in United States currency, by check drawn on a local branch of a United States bank.

(b) When the Contracting Officer determines that the value of materials delivered to the work site may be taken into account in preparing the progress payment estimate, the Contractor shall:

(1) Compile the initial inventory list which shall be complete as regards to descriptions, quantities, nomenclatures, and prices, and shall be fully supported by certified invoices or other documentary evidence acceptable to the Contracting Officer. The list must be revised each month to show additions to the inventory, if any (supported by additional invoices), and deletions of material used during the month.

(2) Submit monthly, subsequent lists for the material previously covered by certified invoices showing the exact status of remaining material based on a physical inventory.

(3) Furnish inventory lists in duplicate at least five days prior to the date for submission of progress estimate for monthly payment.

(c) In approving payments for material inventories, the Contracting Officer will authorize payment of 75 percent of the cost of material as part of the monthly payments, provided, however, that:

(1) Any line item with a total value of less than $100 will be deleted; and

(2) The total value of the inventory, exclusive of deleted line items, exceeds $1,000.

(End of clause)

3552.232–71 Availability of Funds.

As prescribed in 3532.705–1, insert the following clause:

AVAILABILITY OF FUNDS (JAN 1990)

The authorization of performance of work under this contract during the initial contract period and any extension period(s) is contingent upon the availability of funds to procure this service. If the contract is awarded or extended, the Panama Canal Commission's obligation beyond the end of the fiscal year (September 30) in which the award or extension is made is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Panama Canal

Commission for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for performance and written notice of such availability is given to the Contractor.

(End of clause)

3552.232–72 Presentation of Statement of Release From Claims.

As prescribed in 3532.806(a), insert the following clause:

PRESENTATION OF STATEMENT OF RELEASE FROM CLAIMS (JAN 1990)

As a condition for final payment, the Contractor shall present a release of all claims against the Government arising by virtue of this contract. The release shall be applicable to all claims except those that the Contractor has specifically excepted in stated amounts 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. 203 and 41 U.S.C. 15). The release is due within 14 days of final acceptance.

(End of clause)

3552.232–73 Invoices.

As prescribed in 3532.111(a)(8), insert a clause substantially as follows:

INVOICES (JAN 1990)

(a) Invoices shall be submitted in an original and two copies to the office designated elsewhere in this contract.

(b) To constitute a proper invoice for supply or service (other than architect-engineer service) contracts, the invoice must include the items listed in paragraph (a)(4), subdivisions (i) through (viii) of clause 52.232–25, Prompt Payment. The invoice must be accompanied by a copy of the packing list, showing weights and measurements (gross and net) and contents of each package, if applicable. If items are mailed, the insurance parcel post receipt or copy thereof must accompany the invoice.

(c) To constitute a proper invoice for construction contracts, the invoice must include the items listed in paragraph (a)(2), subdivisions (i) through (ix) of clause 52.232–27, Prompt Payment for Construction Contracts.

(d) To constitute a proper invoice for architect-engineer services, the invoice must include the items listed in paragraph (a)(3), subdivisions (i) through (viii) of clause 52.232–26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.

(e) If this contract requires a written release from the Contractor with respect to claims, the release must accompany the invoice.

(End of clause)

3552.236–70 Mailing of Correspondence and Bids.

As prescribed in 3536.371(a)(6), insert the following provision:

MAILING OF CORRESPONDENCE AND BIDS (JAN 1990)

(a) Prospective bidders may submit inquiries concerning the specifications by writing the following:

(For local bidders)
Specifications and Estimates Branch
Engineering Division
Engineering and Construction Bureau
Balboa, Republic of Panama

(For other bidders)
Specifications and Estimates Branch
Engineering Division
Engineering and Construction Bureau
APO Miami 34011–5000

(b) Bids to be mailed shall be addressed as follows:

(For local bidders)
Contracting Officer
Engineering and Construction Bureau
Panama Canal Commission
Balboa, Republic of Panama

(For other bidders)
Contracting Officer
Engineering and Construction Bureau
Panama Canal Commission
APO Miami 34011–5000

(End of provision)

3552.236–71 Additive Items.

As prescribed in 3536.371(a)(7), insert the following provision:

ADDITIVE ITEMS (JAN 1990)

(a) The low bidder for purposes of award shall be the conforming responsive bidder offering the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded in the numerical order of priority listed in the schedule within the funds determined by the Contracting Officer to be available on the date of bid opening.

(b) For example, when the amount of available funds is $100,000, and a bidder's base bid and bid for successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, respectively, the total amount of this bid for purposes of award would be $95,000 for the base bid plus the first additive, with the second, third and forth additives being omitted because the second additive ($8,000) would cause the total bid to exceed $100,000. If, for more than one

bidder, the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded are equal, then the low bidder for purposes of award shall be the one submitting the lowest price for the base bid item.

(c) After the low bidder has been determined, the Contracting Officer shall be free to award the contract for the base bid item and any quantity of the additive bid items, but only in the numerical order of priority listed in the schedule, and provided that the total price is within the amount of funds available on the date of award and that the award does not exceed the price offered by any other conforming responsive bidder for the same bid items.

(d) The Contracting Officer may reject a bid as nonresponsive if it is materially unbalanced as to prices for any of the different bid items. A bid is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

Alternate I (Jan 1990)

If the additives may be awarded with the base bid item in any combination, substitute the following text in place of the basic text:

(a) The low bidder for purposes of award shall be the conforming responsive bidder offering the lowest total price for the base bid item plus, in the numerical order of priority listed in the schedule, the largest number of additive bid items that can be awarded within the funds determined by the Contracting Officer to be available on the date of bid opening.

(b) If, for all bidders, inclusion of the next additive bid item in the listed order of priority would make the award exceed such available funds, it shall be omitted and the next subsequent additive bid item or items shall be included if the prices on one or more bids allow award thereon within the funds available. For example, when the amount of available funds is $100,000, and a bidder's base bid and bid for successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, respectively, the total amount of this bid item for purposes of award would be $99,000 for the base bid plus the first ($10,000) and fourth ($4,000) additives. All bids shall be evaluated and the low bidder determined on the basis of the same additive bid items, as above provided. If, for more than one bidder, the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded are equal, then the low bidder for purposes of award shall be the one submitting the lowest price for the base bid item.

(c) After the low bidder has been determined, the Contracting Officer shall be free to award the contract for the base bid item and any quantity and combination of the additive bid items regardless of their numerical order of priority listed in the schedule, provided that the total price is within the amount of funds available on the date of award and that the award does not exceed the price offered by any other conforming responsive bidder for the same bid items.

(d) The Contracting Officer may reject a bid as nonresponsive if it is materially unbalanced as to prices for any of the different bid items. A bid is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

3552.236–72 Cost Limitation.

As prescribed in 3536.371(a)(9), insert the following provision:

COST LIMITATION (JAN 1990)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. By signing its bid, the bidder certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (1) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (2) exceed the cost limitations unless such limitations have been waived by the Commission's Procurement Executive prior to award.

(End of provision)

3552.236–73 Scope of Work.

As prescribed in 3536.570(k), insert the following clause:

SCOPE OF WORK (JAN 1990)

The Contractor shall furnish all plant, materials, equipment, supplies, labor and transportation, including, fuel, power, water (except any materials, equipment, utility or service, if any, specified herein to be furnished by the Commission), as required to accomplish all work under the contract, in strict accordance with the specifications, schedules, and drawings, all of which are made a part hereof, and including such detail drawings as may be furnished by the Contracting Officer from time to time during the prosecution of the work in explanation of said drawings.

(End of clause)

3552.236–74 Work Sites, Yards, Shops, and Offices.

As prescribed in 3536.570(l), insert the following clause:

WORK SITES, YARDS, SHOWS, AND OFFICES (JAN 1990)

(a) The term ''work site'' will embrace all areas wherein operations are conducted by the Contractor in connection with the contract, including Commission work areas, plant, shops, yards, offices, camps and other facilities. The Contractor may be permitted to use areas within the Canal Operating Area for storage-of-work purposes on a temporary basis.

(b) Prior to commencement of work, the Contractor shall, upon request, submit for the approval of the Contracting Officer, prints in quadruplicate, showing the locations of its major plant, offices, buildings, shops, storage yards, and other construction appurtenances which it proposes to construct. The Contractor shall remove any structure which it may construct in Canal Operating Areas, and restore the work site to its original condition after completion of the work.

(c) If, at any time during the progress of the work, areas which have been allocated to the Contractor are not being used by the Contractor or are not essential to the future execution of the work, as determined by the Contracting Officer, the Contractor shall, when so directed, promptly clean up and vacate such areas at no expense to the Commission. The Contractor shall keep the buildings and grounds in use by the contractor at the work site in an orderly and sanitary condition, subject to the approval of the Contracting Officer.

(d) Only equipment and materials required or used in connection with the work under the contract may be stored in Canal Operating Areas. Upon completion of the contract, and before final payment is made, the Contractor shall remove all equipment and materials from such areas.

(End of clause)

3552.236–75 Work Time Limitations.

As prescribed in 3536.570(m), insert the following clause:

WORK TIME LIMITATIONS (JAN 1990)

No work shall be done on Sundays or on days treated as a holiday for employees of United States Government agencies in the Republic of Panama, unless authorized or directed by the Contracting Officer. Requests by the Contractor to work on such days must be made in writing at least three days in advance.

(End of clause)

3552.236–76 Accident Prevention.

As prescribed in 3536.570(n), insert the following clause:

ACCIDENT PREVENTION (JAN 1990)

(a) In performing this contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies and equipment; and avoiding work interruptions. For these purposes, 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 this purpose are taken.

(b) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contracting Officer.

(c) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, 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 base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(d) The Contractor shall call to the attention of the Contracting Officer or his representative any unsafe condition which is not within the power of the Contractor to correct but which could be corrected by others.

(e) The Contractor shall, when performing work of an electrical nature, or when working in close proximity to electrical equipment or circuits, observe the following:

(1) Be responsible for determining that the facility on which his men are to work is de-energized, isolated, and identified with accepted tag out/lock out procedures. The Commission will de-energize or isolate the cable, conductor, bus, circuit breaker, or line on which the Contractor desires to work. The Commission will also re-energize the cable, conductor, bus, circuit breaker, or line upon which the Contractor has completed work and which he certifies is ready for service.

(2) When performing work, such as painting, roofing or modifying buildings, in close

proximity to electric wires, work shall be scheduled in such a manner that these wires shall be de-energized during the period men are working around them. Arrangements shall be made with the Contracting Officer's representative for de-energizing such service wires and, unless otherwise specified, work requests shall be furnished by the Contractor to the Commission's Electrical Division to cover such work.

(3) Painting, alterations, and additions to Commission facilities frequently require work to be performed in close proximity to electrical equipment and circuits within buildings. When such work, in the opinion of the Contracting Officer, requires the de-energization of circuits, arrangement for de-energizing services will be made by the Contracting Officer with the agency involved.

(4) De-energization of circuits required in paragraphs (e)(2) and (3) of this clause shall be scheduled in such a manner that prolonged service interruptions shall be avoided.

(f) In addition to the above, the Contractor shall:

(1) Submit, within 30 calendar days after date of award, a written outline of his proposed safety program for the contract. The safety program shall include frequent and appropriate safety training sessions for employees as a regular and integral part of the contract activities.

(2) Submit for approval a list of the personal protective equipment, by type and manufacturer, to be used by employees in hazardous occupations.

(3) Confer with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the overall safety program.

(g) The Contractor shall be responsible for its subcontractors' compliance with this clause.

(End of clause)

[55 FR 7664, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

3552.236–77 Working in Confined Spaces.

As prescribed in 3536.570(o), insert the following clause:

WORKING IN CONFINED SPACES (JAN 1990)

The Contractor shall comply with the Commission's policy regarding work to be performed in confined or enclosed spaces. This policy is set forth in a pamphlet entitled ''Panama Canal Commission Confined Spaces Policy'', which will be made available to the Contractor, or a prospective contractor, upon request to the Contracting Officer or his representative.

(End of clause)

3552.236–78 Safety Sign.

As prescribed in 3536.570(p), insert the following clause:

SAFETY SIGN (JAN 1990)

The Contractor shall construct a safety sign at the work site at a location directed by the Contracting Officer. The sign shall be 6 feet by 4 feet in size and shall conform to the requirements of the sketch attached at the end of these General Conditions. The sign shall be erected as soon as possible, but not later than 10 days after work is initiated at the work site. No separate payment will be made for erecting and maintaining the safety sign.

(End of clause)

3552.236–79 Protection of Material and Work.

As prescribed in 3536.570(q), insert the following clause:

PROTECTION OF MATERIAL AND WORK (JAN 1990)

The Contractor shall protect and preserve all material, supplies and equipment of every description (including property which may be furnished or owned by the Commission) and all work performed. All reasonable requests of the Contracting Officer to enclose or specially protect such property shall be complied with. If, as determined by the Contracting Officer, material, equipment, supplies, and work performed are not adequately protected by the Contractor, such property may be protected by the Commission, and the cost thereof may be charged to the Contractor or deducted from any payments due the Contractor.

(End of clause)

3552.236–80 Toilet Facilities.

As prescribed in 3536.570(r), insert the following clause:

TOILET FACILITIES (JAN 1990)

Unless otherwise noted, the Contractor shall provide and maintain adequate toilet facilities at the work site for the use of all personnel engaged in the work under the contract. The number, types and locations of such toilet facilities shall be approved by the Contracting Officer. These facilities, where connection to the sanitary sewer system is possible, will be connected and disconnected to the sewer system by the Commission at the expense of the Contractor. The toilet facilities shall be maintained by the Contractor in a clean and sanitary condition. Upon

completion of the work, all toilet facilities shall be removed by the Contractor.

(End of clause)

3552.236–81 Drinking Water.

As prescribed in 3536.570(s), insert the following clause:

DRINKING WATER (JAN 1990)

Unless otherwise noted, the Contractor shall provide suitable drinking water and sanitary dispensing facilities for the Contractor's employees.

(End of clause)

3552.236–82 Contract Bid Breakdown.

As prescribed in 3536.570(t), insert the following clause:

CONTRACT BID BREAKDOWN (JAN 1990)

The Contractor shall, within 10 days after receipt of the Notice to Proceed, or on receipt of request, submit for approval a breakdown of its bid in a form to be outlined by the Contracting Officer. Supplementary bid breakdowns of all or part of the bid shall be furnished if requested by the Contracting Officer. Payments to the Contractor shall be based upon the information presented in the approved bid breakdown.

(End of clause)

3552.236–83 Descriptive Data and Correspondence.

As prescribed in 3536.570(u), insert the following clause:

DESCRIPTIVE DATA AND CORRESPONDENCE (JAN 1990)

(a) All catalogs, operating instructions, descriptive literature, references, specifications, drawings and notes relevant to the equipment furnished under the specifications, and correspondence shall be in the English language. All drawings shall be prepared in accordance with American Standard Drafting Room Practice as approved by the American National Standard Institute (ANSI) standards and in accordance with the following:

(1) All dimensions shall be given in feet and inches.

(2) All weights shall be avoirdupois scales.

(3) All volume measurements shall be in cubic feet, cubic inches or U.S. gallons (231 cu. in/gal).

(4) All heat quantities shall be in British thermal units (Btu's).

(5) All instruments shall read in units of the English system, except gallons shall be U.S. gallons as noted in paragraph (a)(3) of this clause.

(b) When required by the various sections of these specifications or when requested by the Contracting Officer, seven (7) copies (unless otherwise specified) of the following items shall be submitted by the Contractor to the Contracting Officer for approval.

(1) *Material Lists:* Before any materials, fixtures or equipment are purchased, the Contractor shall submit a complete list of materials, fixtures and equipment to be incorporated in the work, together with the names and addresses of the manufacturers and their catalog numbers and trade names. A separate complete list shall be furnished for the equipment called for under each section of the specifications. No consideration will be given to partial lists submitted from time to time.

(2) *Descriptive Data:* In order to establish quality or suitability of materials, fixtures and equipment, the Contractor shall furnish detailed information and descriptive data for the various items. Approval of items will be based on manufacturer's published ratings. Any items which are not in accordance with the specifications will be rejected. The product of any reputable manufacturer regularly engaged in the commercial production of specified equipment will not be excluded on the basis of minor differences, provided all essential requirements of this specification relative to materials, capacity, and performance are met.

(3) *Samples:* (i) The Contractor shall submit all samples within a reasonable time before use to permit inspection and testing. Samples of materials subject to laboratory tests require, generally, a minimum of 20 days for tests after receipt of sample by the Contracting Officer. However, considerably more time may be required depending on the nature of the tests and the ability of the laboratory to take care of current testing requirements.

(ii) Samples of the sizes and numbers required by the Contracting Officer or specified in the contract shall be submitted (except when this requirement is waived by the Contracting Officer) with label on each, giving contract number, specification paragraph, name and materials, trade name, name of manufacturer, place of origin, name and location of building on which to be used, and name of Contractor submitting same.

(iii) Samples shall be so packed as to ensure delivery at destination in good condition and with all transportation charges prepaid by sender.

(iv) Samples of materials not subject to destructive tests, when approved, will be kept on file in the office of the Contracting Officer until the completion of the work, except samples of hardware or other items approved by the Contracting Officer, which may be suitably marked for identification and installed in the work. If the Contractor desires an approved sample for the Contractor's own file or for a manufacturer, the Contractor

shall submit sufficient additional samples to permit the desired distribution. Samples approved or rejected will be returned to the Contractor only at the Contractor's request and expense.

(v) Samples selected will be tested in accordance with the requirements of the applicable material specifications. If a sample fails to meet specification requirements, the cost of testing shall be at the expense of the Contractor. Failure of samples to pass specified requirements will be sufficient cause for refusal to consider for this work any further samples from the manufacturer whose materials have failed to pass the required tests.

(c) *Submittals:* Each submittal shall be accompanied by the required number of Panama Canal Form 3062, Submittal Data For Approval, fully executed and certified by the Contractor. When possible, a single transmittal shall be used for all work of a section of the specifications, but in no instance shall a transmittal include work of more than one section. Each copy of each item submitted for approval shall also be properly identified as to the subject matter indicated thereon, the item of equipment or material to which it pertains, and the contract number under which it is submitted. Each point of difference between the proposed equipment or material and the specified equipment or material shall be clearly indicated on the submittal. The submittals shall be complete and shall be checked by both the materials or equipment supplier and the Contractor, and shall contain all required and necessary detailed information. Fabrication of the equipment and construction where involved shall not start until the submittals have been approved.

(d) If approved by the Contracting Officer, each copy of the submittal will be identified as having received such approval by being stamped either ''Approved'' or ''Approved as Noted'', and one set will be returned to the Contractor. Such approved submittals need not be resubmitted. If, however, the set returned to the Contractor is stamped ''Disapproved'', such submittal shall be resubmitted as expeditiously as possible. If the Contractor desires to have more than one copy returned for the Contractor's use, the Contractor must increase the number of copies submitted accordingly and must so indicate on the transmittal form.

(e) The approval of submittals by the Contracting Officer shall not be construed as a complete check, but will indicate only that, in general, the materials, equipment, system, arrangement, detailing and method of construction are satisfactory. Approval will not relieve the Contractor of the responsibility for any error or omission which may exist, and the Contractor shall be responsible for the dimensions and design of adequate connections, details, satisfactory construction, installation and operation of all work in accordance with the contract provisions. Approval shall be subject to final, in-place inspection of the work.

(End of clause)

3552.236–84 Instruction Books.

As prescribed in 3536.570(u), insert the following clause:

INSTRUCTION BOOKS (JAN 1990)

The Contractor shall deliver to the Contracting Officer nine (9) copies (unless otherwise specified) of all instruction books as called for under the various sections of the Technical Conditions. The instruction books shall be submitted and approved before work can be started on installation of the equipment to which they pertain. Each copy of the instruction books shall provide legible, complete and clear instructions, descriptions and data for installation, operation, maintenance and repair of the equipment as well as replacement parts lists. Each copy of an instruction book shall be bound in separate durable covers. Method of binding shall be post type or equivalent to permit insertion of replacement pages. Ring or spiral type loose leaf binders are not acceptable. Each copy shall be properly and indelibly identified with the name of the project, the contract number, and the name and location of the equipment to which it pertains.

(End of clause)

3552.236–85 Record Drawings.

As prescribed in 3536.570(u), insert the following clause:

RECORD DRAWINGS (JAN 1990)

The Contractor shall, during the progress of the work, keep a careful and current record, on a separate set of contract drawings, of all changes and corrections from the layouts shown on the drawings. These drawings shall be available for inspection at all times at the work site indicated by the drawings. If the Contracting Officer determines that the record drawings are seriously out of date, the Contracting Officer may require the Contractor to cease physical work on the portion of the work covered by the drawings until the drawings are brought up to date. Any costs of delays resulting from such actions by the Contracting Officer shall be borne by the Contractor. Upon completion, the Contractor shall revise one set of prints of contract drawings, furnished by the Contracting Officer, showing the work as actually constructed. These drawings shall be delivered to the Contracting Officer within 14 calendar days after receipt of the ''Acceptance of Work'' letter. All revisions made to the contract drawings shall be shown so that

they stand out against the unchanged items in the drawing.

(End of clause)

3552.236–86 Restricted Areas.

As prescribed in 3536.570(v), insert the following clause:

RESTRICTED AREAS (JAN 1990)

(a) If any of the work is located within a restricted area (such as locks areas, power stations, water purification plants, pump stations, and industrial areas), installation clearances, at no cost to the Contractor, will be required for all employees who must work in the restricted area. The Contractor shall submit to the Contracting Officer a listing of all employees to be cleared. The listing should be submitted at least 15 days before the anticipated starting date and should include the full name and cedula or identification card number of each employee and must be in alphabetical order.

(b) Employees of the Contractor must carry their cedulas or identification cards at all times and produce them upon request of authorized personnel. The Contractor shall ensure that the Contractor's employees remain in the immediate area of work and do not wander indiscriminately about the restricted areas.

(End of clause)

3552.236–87 Surplus Space.

As prescribed in 3536.570(y), insert the following clause:

SURPLUS SPACE (JAN 1990)

Surplus space in Commission buildings, facilities, or land areas may be rented by Commission contractors, or by subcontractors through and in the name of a Commission contractor, for use in support of contract performance upon a written request by the Contractor to the Contracting Officer. The request shall include specific information regarding the location desired, the number of square feet required, and the type of activities to be conducted. If the request is accepted, the space assignment will be administered under the terms of a ''Letter of Authorization'' (LOA). Failure by the Contractor to comply with any of the terms of the LOA, or to completely remove itself from the rented space after the Contracting Officer has advised the Contractor that the LOA is terminated, shall be construed as a violation of this contract clause and shall entitle the Contracting Officer to take whatever action is appropriate under the contract, including termination for default and the withholding of final payment.

(End of clause)

3552.243–70 Modification Proposals—Price Breakdown.

As prescribed in 3543.205 insert the following clause:

MODIFICATION PROPOSALS—PRICE BREAKDOWN (JAN 1990)

The Contractor shall furnish an itemized price breakdown, as required by the Contracting Officer, with the Contractor's proposal in connection with a contract modification. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs as well as profit, and shall cover all work involved to accomplish the modification, whether deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by such date as may be specified by the Contracting Officer.

(End of clause)

3552.244–70 Subcontractors.

As prescribed in 3536.570(x), insert the following clause:

SUBCONTRACTORS (JAN 1990)

If subcontracts have been awarded for work under this contract, the Contractor shall submit to the Contracting Officer, within 30 calendar days after the date of award, a statement on the Commission's standard ''Subcontractors'' form setting forth the name and address of the subcontractor, a summary description of the work subcontracted and a description of subcontractor's previous experience in related work. If, at any time, the Contracting Officer determines that any subcontractor's performance is unsatisfactory, the Contracting Officer will notify the contractor accordingly, and steps will be taken immediately for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this contract shall create any contractual relation between the subcontractor and the Commission. Subcontractors and their employees shall be considered to be employees of the Contractor.

(End of clause)

3552.247–70 Evaluation of Delivery Terms in Contract Awards.

As prescribed in 3547.370, insert the following provision:

EVALUATION OF DELIVERY TERMS IN CONTRACT AWARDS (JAN 1990)

(a) When competing offers are received which specify the two different allowable terms of delivery, the offers will be evaluated at the actual or constructive landed cost in the Republic of Panama in accordance with the procedures stated below. In this connection, and for evaluation purposes only, the point of delivery will be the Port of Balboa, Panama or the Port of Cristobal, Panama for all offerors. Therefore, offerors quoting on an f.o.b. destination New Orleans basis shall furnish the total cubic measurement for each item being offered in order to apply the following procedures:

(1) *F.o.b. Destination New Orleans:* Offers quoting delivery in the United States are required on an f.o.b. destination New Orleans, Louisiana basis since transportation from New Orleans will be by a vessel, operating pursuant to a U.S. Government contract, which will discharge at the Port of Balboa. In order to compare these offers with offers quoting c.i.f. destination Panama, the following factors will be applied:

(i) Ocean freight, New Orleans to Balboa $_____ *(Contracting Officer insert appropriate amount)* per measurement ton of 40 cubic feet (MTON). This rate includes stevedoring and handling fees.

(ii) A self-insured loss factor of one percent of the dollar value of the offer price.

(iii) If the delivery port specified in the Commission solicitation is Cristobal, transportation from Balboa to Cristobal will be calculated at the rate of $_____ *(Contracting Officer insert appropriate amount)* per MTON.

(2) *C.i.f. Destination Panama:* Foreign offerors proposing to ship from foreign countries, U.S. offerors preferring to ship directly to Panama, and Panamanian offerors proposing to ship from stock within the Republic of Panama, are required to ship on a c.i.f. Balboa, Panama or Cristobal, Panama basis, as applicable.

(b) Failure to furnish the total cubic measurements of the individual items could result in the rejection of the offer. Moreover, if actual total cubic measurements vary from the information furnished and the award was made to the Contractor on the constructive cost based on the erroneous information, the Contractor will be charged for the difference between the actual cost and the price of the next low responsive offeror.

(End of provision)

PART 3553—FORMS

Sec.
3553.000 Scope of part.

Subpart 3553.1—General

3553.107 Obtaining forms.

Subpart 3553.2—Prescription of Forms

3553.200 Scope of subpart.
3553.213 Small purchase and other simplified purchase procedures (Forms 1010, 1820, 1821, 1822, 2008, 3083, 3163, 3163–MTD, 7071, 7074).
3553.215 Contracting by negotiation (Form 6122).
3553.236 Construction and architect-engineer contracts (Form 3062).

Subpart 3553.3—Illustration of Forms

3553.300 Scope of subpart.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7673, Mar. 2, 1990, unless otherwise noted.

3553.000 Scope of part.

This part prescribes Panama Canal Commission forms to be used in various acquisitions and other information pertaining to the forms.

Subpart 3553.1—General

3553.107 Obtaining forms.

Commission forms may be obtained from the cognizant Commission contracting office or by written request as indicated below:

(a) For all forms prescribed at 3553.213, write to: Panama Canal Commission, Logistical Support Division, APO Miami 34011–5000;

(b) For the forms prescribed at 3553.215 and 3553.236, write to: Panama Canal Commission, Construction Division, APO Miami 34011–5000.

Subpart 3553.2—Prescription of Forms

3553.200 Scope of subpart.

This subpart prescribes Commission forms for use in the acquisition of supplies and services, including construction. The subpart is arranged by subject matter in the same order as, and is

keyed to, the parts of the PAR in which the form usage requirements are addressed.

3553.213 Small purchase and other simplified purchase procedures (Forms 1010, 1820, 1821, 1822, 2008, 3083, 3163, 3163–MTD, 7071, 7074).

The following forms are prescribed as stated below for use in small purchases, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *Panama Canal Form No. 1010, Purchase Order.* This form may be used by the Inventory Management Branch in lieu of Optional Forms 347 and 348 for the purposes specified in 3513.505–2(a).

(b) *Panama Canal Form No. 1820, Purchase Order.* This form may be used by the Purchasing and Contract Branch in lieu of Optional Form 347 for the purposes specified in 3513.505–2(b).

(c) *Panama Canal Form No. 1821, Purchase Requisition.* This is a 6-sheet snap-out form. The first, fifth, and sixth sheets are entitled ''Purchase Requisition'' (the second, third and fourth sheets are explained in following paragraph (d)). The purchase requisition is an internal document that is prescribed for use only by Commission activities to request purchasing action by the Purchasing and Contracts Branch (see 3513.505–70).

(d) *Panama Canal Form No. 1821, Request for Quotation.* This is a 6-sheet snap-out form. The second, third and fourth sheets are entitled ''Request for Quotation'' (the first, fifth, and sixth sheets are explained in paragraph (c) of this section). As specified at 3513.107(a)(4)(i), this form may be used by the Purchasing and Contracts Branch in lieu of Standard Form 18 for the solicitation of nonstock items and services.

(e) *Panama Canal Form No. 1822, Request For Quotation Continuation.* As specified at 3513.107(a)(4)(ii), this form may be used with Panama Canal Form No. 1821 when additional space is needed.

(f) *Panama Canal Form No. 2008, This Is A Request For Prices; It Is Not An Order.* As specified at 3513.107(a)(4)(iii), this form may be used by the Inventory Management Branch in lieu of Standard Form 18 for the solicitation of standard stock items.

(g) *Panama Canal Form No. 3083, Purchase Order Continuation.* As specified at 3513.505–2(c), this form may be used with Panama Canal Form No. 1820, in lieu of Optional Form 348, when additional space is needed.

(h) *Panama Canal Form No. 3163, Division Purchase Order.* As specified at 3513.505–2(d), this form may be used by all activities having contracting authority in lieu of Optional Form 347 for the decentralized procurement of supplies and services.

(i) *Panama Canal Form No. 3163–MTD, Division Purchase Order.* As specified at 3513.505–2(e), this form may be used by the Motor Transportation Division and the New Orleans Branch, Logistical Support Division in lieu of Optional Form 347 for purchases of nonstandard stock automotive repair parts that do not exceed dollar amounts established by the General Services Director.

(j) *Panama Canal Commission Form 7071, General Contract Clauses and Provisions, Small Purchases.* As specified at 3513.107(a)(4)(iv), this form shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

(k) *Panama Canal Commission Form 7074, Information Sheet.* As specified at 3513.107(a)(4)(iv), this form shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

3553.215 Contracting by negotiation (Form 6122).

As specified at 3515.804–6, *Panama Canal Form No. 6122, Cost Breakdown,* may be used by the contracting officer to require contractors to submit information for cost or price analysis in connection with requests for proposals or modifications not exceeding $25,000.

3553.236 Construction and architect-engineer contracts (Form 3062).

As specified at 3536.571, *Panama Canal Form 3062, Submittal Data For Approval,* shall be used by contractors as a transmittal document when data is to be submitted for the contracting officer's approval pursuant to FAR clause

52.236–5 or clause 3552.236–83 of this regulation.

Subpart 3553.3—Illustration of Forms

3553.300 Scope of subpart.

PAR forms are not illustrated in the PAR. Persons wishing to obtain copies of Commission forms prescribed in the PAR may do so in accordance with 3553.107.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 3570—ACQUISITION OF PANAMANIAN SUPPLIES AND SERVICES

Sec.
3570.000 Scope of part.

Subpart 3570.1—Panamanian Preference

3570.101 Determination and definitions.
3570.102 Policy.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7674, Mar. 2, 1990, unless otherwise noted.

3570.000 Scope of part.

This part provides guidance on implementation of Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 as it relates to the preferential acquisition of supplies and services obtainable in the Republic of Panama. (The pertinent Article IX language is set forth at 3525.801–74.)

Subpart 3570.1—Panamanian Preference

3570.101 Determination and definitions.

(a) It has been determined by the Administrator of the Panama Canal Commission that the acquisition of supplies and services obtainable in the Republic of Panama is required under the conditions contemplated by Article IX.

(b) For the purposes of this determination, the following words and terms, as used in Article IX and this part 3570, shall have the meanings stated below:

Comparable in quality and price means the supplies or services (1) must conform to the purchase description, specifications, or statement of work that sets forth the Commission's requirements; and (2) can be acquired at a price equal to or lower than the price for similarly conforming supplies or services obtainable from sources outside the Republic of Panama.

Goods means manufactured or unmanufactured articles, materials and supplies.

Obtainable in the Republic of Panama means the supplies or services can be obtained from sources in the Republic of Panama.

Panamanian origin means goods that are grown, mined, or produced in the Republic of Panama; or in the case of goods which consist in whole or in part of materials from another country, have been substantially transformed by processes performed in the Republic of Panama into new and different articles of commerce with a name, character, or use distinct from that of the article or articles from which they were so transformed.

Supplies, pursuant to the definition in FAR 2.101, means ''all property except land or interest in land.'' Accordingly, the term includes construction.

3570.102 Policy.

(a) When supplies or services can be obtained from sources both within and without the Republic of Panama, and the following conditions exist, preference shall be afforded to those sources within Panama to the maximum extent possible:

(1) The supplies or services can be provided at the time they are required;

(2) The supplies or services are comparable in quality and price to those that can be obtained from sources outside Panama; and

(3) The sources in Panama:

(i) Are determined to be responsible prospective contractors pursuant to FAR subpart 9.1, and

(ii) Can comply in all material respects with the terms and conditions of the acquisition document.

(b) In the comparison of prices with respect to subparagraph (a)(2) of this section, there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance, and handling. The cost of insurance shall be calculated at one percent (1%) of the value of the supplies, or any supplies incidental to services, in the event the contract does not require insurance.

(c) When choosing between goods from sources within Panama that are otherwise equal, preference shall be given to those goods having a larger percentage of components of Panamanian origin.

(d) When conducting an acquisition of supplies or services for which the estimated cost is not expected to exceed the small purchase limitation in FAR part 13, participation may be limited to sources in Panama unless the contracting officer determines that there is no reasonable expectation of obtaining quotations from two or more such sources that:

(1) Will be responsive to the required delivery time, and

(2) Will be comparable in quality and price to supplies or services from sources outside Panama.

(e)(1) In order to conduct an acquisition of supplies or services above the small purchase limitation and limit participation in the acquisition to sources in Panama, the contracting officer shall:

(i) Prepare and submit a class or an individual determination and findings to the Procurement Executive, and

(ii) Obtain that official's written approval of such determination and findings.

(2) The determination and findings must clearly document that:

(i) An acquisition limited to such sources would result in obtaining supplies or services at the time they are required that would be comparable in quality and price to those obtainable from sources outside Panama, or

(ii) An acquisition from sources outside Panama would be impracticable because of the nature of the acquisition (e.g., a requirements type contract where deliveries must be made within a very short time span by trucks or pipeline from stockpiles or storage facilities located in Panama).

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY

(Parts 4400 to 4499)

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SUBCHAPTER A—GENERAL

PART 4401—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ACQUISITION REGULATION SYSTEM

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AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31316, Aug. 1, 1985, unless otherwise noted.

4401.000 Scope of part.

This part sets forth policies and procedures concerning the Federal Emergency Management Agency Acquisition Regulation (FEMAAR) System.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

FEMAAR is a supplement to the Federal Acquisition Regulation (FAR) and is established for the codification and publication of uniform policies and procedures for acquisitions by FEMA.

4401.103 Applicability.

This regulation applies to all acquisitions within FEMA, but not to placement or administration of cooperative agreements or grants.

4401.104 Issuance.

4401.104–1 Publication and code arrangement.

(a) The FEMAAR is published in (1) the daily issue of the FEDERAL REGISTER and (2) cumulated form in the Code of Federal Regulations (CFR).

(b) The FEMAAR is issued as chapter 44 of title 48, CFR.

4401.104–3 Copies.

Copies of the FEMAAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Agency offices may request copies of the FEMAAR from the Policy and Evaluation Division, Office of Acquisition Management.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

Policies, procedures, and guidance of an internal nature may be issued

through internal FEMA issuances such as manuals, standard operating procedures, directives or instructions.

4401.303 Codification and public participation.

If subject matter in FAR requires no implementation, the FEMAAR will not contain a corresponding part, subpart, section, or subsection number. FAR subject matter governs.

Subpart 4401.4—Deviations From the FAR

4401.403 Individual deviations.

The Director, Office of Acquisition Management, must authorize individual deviations in advance. Requests for authorization must:

(a) Cite the specific parts of the FAR or FEMAAR from which it is desired to deviate;

(b) Describe the deviation fully;

(c) Indicate the circumstances which require the deviation;

(d) Give reasons supporting the action requested; and

(e) Give reasons why the action is in the best interest of the Government.

4401.404 Class deviations.

The Director, Office of Acquisition Management, must authorize class deviations in advance.

4401.405 Deviations pertaining to treaties and executive agreements.

The Director, Office of Acquisition Management, is the central control point for all deviations including those pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

4401.601 General.

The Director, Office of Acquisition Management, is designated the head of contracting activities and FEMA's procurement executive. The Director, Office of Acquisition Management, shall establish policy throughout the agency; monitor the overall effectiveness and efficiency of the agency's contracting offices; establish controls to assure compliance with laws, regulations, and procedures; and delegate contracting officer authority. The Director, Office of Acquisition Management, shall exercise the authority delegated under 44 CFR 2.67 FEMA Organization, Functions and Delegations.

4401.603 Selection, appointment, and termination of appointment.

4401.603–2 Selection.

In the areas of experience, training, and education, the following shall be required unless contracting authority is limited to a simplified purchase procedures. Waiver of any of these criteria shall be in writing:

(a) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have a minimum of two years experience performing contracting, procurement, or purchasing functions in a Government or commercial contracting office. Additionally, where a contracting officer will work in a specialized field, experience in the field shall be a criterion for the appointment.

(b) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have the equivalent of a bachelor's degree from an accedited college or institution with major studies in business administration, law, accounting, or related fields. The appointing official may waive this requirement when a candidate is otherwise qualified by virtue of extensive contract-related experience and training, business acumen, judgment, character, reputation, and ethics.

(c) An individual contracting officer or an individual appointed to a position having contracting authority shall have successfully completed training courses in both Government basic procurement and Government contract administration, each of not less than 80 class hours. Incumbents not meeting the special training requirements shall

be given 24 months to meet the minimum qualification standards.

4401.603–3 Appointment.

Except for disaster-related activities and unusual circumstances as determined by the head of the contracting activity, it is policy to delegate contracting officer authority to individuals rather than to positions. The head of the contracting activity is the appointing authority. Except where the delegation of authority specifically includes the authority for further redelegation, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include a clear statement of such authority and its responsibilities and limitations.

Subpart 4401.7—Determinations and Findings

4401.707–70 Signature authority.

The head of the contracting activity shall sign all class Determination and Findings (D & F's) not otherwise reserved to the agency head.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

This subpart describes the situations appropriate for the use of procurement contracts, grants, or cooperative agreements and provides examples of each.

4401.7001 Procurement contracts.

4401.7000–1 Situations for use.

Procurement contracts are to be used whenever the principal purpose of the instrument is acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government.

4401.7001–2 Examples.

Procurement contracts normally will be used when the principal purpose of the relationship is:

(a) Evaluation (including research if an evaluation character) of the performance of Government program, projects, or grantee activity initiated by FEMA.

(b) Projects funded by administrative funds.

(c) Technical assistance rendered on behalf of the Government to any third party including those receiving grants or cooperative agreements.

(d) Surveys, studies, and research which provide specific information desired by the Government for its direct activities or for dissemination to the public.

(e) Consulting or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(f) Planning for Government use.

(g) Conferences conducted in behalf of the Government.

(h) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(i) Design or development of items for Government use or pursuant to agency definition or specifications.

(j) Generation of management information or other data for Government use.

4401.7002 Assistance.

Assistance may take the form of either grants or cooperative agreements and include:

(a) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.

(b) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.

4401.7002–1 Grants.

Grants are to be used whenever the principal purpose of the relationship is to transfer money, property, services, or anything else of value to a recipient to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is not anticipated.

4401.7002–2 Cooperative agreements.

Cooperative agreements are to be used whenever the principal purpose of the relationship is the transfer of money, property, service, or anything else of value to recipients to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is anticipated.

4401.7002–3 Examples of unsubstantial involvement.

Involvement is not substantial and a grant is the proper instrument when the following types of involvement are planned:

(a) Approval of recipient plans prior to award.

(b) Normal Federal stewardship such as site visits, performance reporting, financial reporting, and audits to ensure that objectives, terms, and conditions of the grants are met.

(c) Unanticipated involvement to correct deficiencies in project or financial performance from the terms of the grants.

(d) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision for the handicapped.

(e) Review of performance after completion.

(f) General administrative requirements, such as those included in OMB Circulars A–21, A–95, A–110, and A–102.

4401.7002–4 Examples of substantial involvement.

Involvement is substantial and a cooperative agreement is the proper instrument when the following types of involvement are planned:

(a) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the cooperative agreement.

(b) Agency and recipient collaboration or joint participation in the performance of the assisted activities.

(c) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, coupled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(d) General administrative requirements beyond those included in OMB Circulars A–102 and A–110.

PART 4402—DEFINITION OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4402.1—Definitions

4402.100 Definitions.

Agency means the Federal Emergency Management Agency (FEMA).

Director means the Director of the Federal Emergency Management Agency.

Interagency agreement means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services, or property are provided to, or obtained from, one or more agencies, bureaus, or departments of the Federal Government. Funds are transferred between the parties as consideration for the supplies, services, or property.

Memorandum of Understanding means an agreement between two or more agencies, bureaus, or departments of the Federal Government or other entity. Funds are not transferred between the parties.

Program office means any office which generates requests for procurement actions.

Project officer means the program office representative cognizant over the technical aspects of a given procurement action.

[50 FR 31318, Aug. 1, 1985]

PART 4403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 4403.1—Safeguards

Sec.

4403.101–2 Solicitation and acceptance of gratuities by Government personnel.

4403.101–3 Agency regulations.
4403.103 Independent pricing.
4403.103–2 Evaluating the certification.

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.
4403.204 Treatment of violations.

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4403.1—Safeguards

4403.101–2 Solicitation and acceptance of gratuities by Government personnel.

Exceptions to the prohibition against soliciting or accepting gratuities are explained in 44 CFR part 3, subpart B.

4403.101–3 Agency regulations.

FEMA ''Standards and Conduct'' are published in 44 CFR part 3. They include requirements for financial disclosure.

4403.103 Independent pricing.

4403.103–2 Evaluating the certification.

The Director, Office of Acquisition Management, is authorized to make the determination described in FAR 3.103–2(b)(2).

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.

Suspected violations shall be reported in the FEMA Office of the Inspector General. A report shall include all facts and circumstances relevant to the case.

4403.204 Treatment of violations.

Following review and any necessary investigation, the Inspector General shall make recommendations to the Director or a designee. If action is to be taken against a contractor, the contractor shall be given the opportunity for a hearing in accordance with FAR 3.204(b).

Subpart 4403.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

The Director, Office of Acquisition Management, may authorize an exception to the policy in FAR 3.601, based on facts and circumstances provided by the program office.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 4405—PUBLICIZING CONTRACT ACTIONS

Sec.
4405.001 Policy.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); Reorganizational Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

4405.001 Policy.

The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be used for this purpose. The search should include a review of data or brochures furnished by sources seeking to do business with the agency. It also should include program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider seeking other sources by publication of proposed procurements.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Unless it is not in the Government's interest, the contracting officer shall make the solicitation source list available to firms requesting it for subcontracting opportunities on contracts exceeding the small purchase threshold.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

In accordance with 44 CFR 2.72(a) authority to approve publication of paid advertisement in newspapers has been delegated to the Director, Office of Administrative Support.

PART 4406—COMPETITION REQUIREMENTS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4406.5—Competition Advocate

4406.501 Requirement.

The Chief, Policy and Planning Division, Office of Acquisition Management is designated FEMA's Competition Advocate.

[50 FR 31319, Aug. 1, 1985]

PART 4408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4408.8—Acquisition of Printing and Related Supplies

4408.802 Policy.

Contracting officers shall obtain approval from the Director, Office of Administrative Support, FEMA's central printing authority before contracting for printing.

[50 FR 31319, Aug. 1, 1985]

PART 4409—CONTRACTOR QUALIFICATIONS

Subpart 4409.4—Debarment, Suspension, and Ineligibility

Sec.
4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

4409.406 Debarment.
4409.406–1 General.
4409.406–3 Procedures.
4409.407 Suspension.
4409.407–1 General.
4409.407–3 Procedures.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4409.4—Debarment, Suspension, and Ineligibility

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Office of Acquisition Management, will notify GSA, maintain records, establish procedures, and direct inquiries as required by FAR 9.404(c).

4409.406 Debarment.

4409.406–1 General.

The Chief of Staff shall be the debarring official.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.406–3 Procedures.

(a) Determination to debar or take other action concerning a firm or individual for a cause listed in FAR 9.406–2 shall be made by the Chief of Staff. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Office of Acquisition Management, via the Office of General Counsel, to the Chief of Staff for appropriate action. The documented file of the case will be included in the submission.

(b) If the Chief of Staff concurs in the proposed debarment, a notice of proposal to debar shall be issued by the Chief of Staff or designee.

(c) The Chief of Staff or designee shall conduct any hearings requested in connection with debarment proceedings. The firm or individual shall have the opportunity to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, or if the firm or individual does not respond within 30 days from receipt of the written notice, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

(d) Appeals may be taken within 30 days after receipt by the firm or individual of a decision to debar. Appeals shall be filed with the Director, FEMA, who shall make a decision based on the record. The Director's decision shall be final.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.407 Suspension.

4409.407–1 General.

The Chief of Staff shall be the suspending official.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.407–3 Procedures.

(a) Any contracting officer may recommend suspension of bidders. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Office of Acquisition Management, via the Office of General Counsel, to the Chief of Staff. The Chief of Staff shall issue the notice of suspension.

(b) The Director, Office of Acquisition Management, shall develop and maintain suspension procedures.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

PART 4412—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4412.3—Priorities, Allocations, and Allotments

4412.303 Procedures.

Rejected rated orders or ACM orders shall be sent to the Department of

Commerce through the head of the contracting activity.

[50 FR 31320, Aug. 1, 1985]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 4414—SEALED BIDDING

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.
4414.402 Opening of bids.
4414.406 Mistakes in bids.
4414.406–3 Other mistakes disclosed before award.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31320, Aug. 1, 1985, unless otherwise noted.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received, and the date. The individual receiving the bids shall then initial under the marking.

(b) A copy of the envelope or other covering bearing the documentation of a bid that was opened by mistake shall be retained in the file.

4414.402 Opening of bids.

The contracting officer, or duly authorized representative, shall be designated as the bid opening officer.

4414.406 Mistakes in bids.

4414.406–3 Other mistakes disclosed before award.

The Director, Office of Acquisition Management, is delegated the authority to make the determinations concerning mistakes in bid other than obvious clerical errors discovered prior to award. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

PART 4415—CONTRACTING BY NEGOTIATION

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

Sec.
4415.413 Disclosure and use of information before award.
4415.413–2 Alternate II.
4415.413–70 Policy.
4415.413–71 Release of information during the solicitation phase.
4415.413–72 Disposition of unsuccessful proposals.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.
4415.505–1 Content of unsolicited proposals.
4415.505–2 Unsolicited renewal proposals.
4415.506 Agency procedures.
4415.506–1 Receipt and initial review.

Subpart 4415.6—Source Selection

4415.612 Formal source selection.
4415.612–70 Scope.
4415.612–71 Key participants.

Subpart 4415.8—Price Negotiation

4415.803 General.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

4415.1003 Debriefing of unsuccessful offerors.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31320, Aug. 1, 1985, unless otherwise noted.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.413 Disclosure and use of information before award.

4415.413–2 Alternate II.

These alternate FAR procedures may be used if approved in writing by the head of the contracting activity.

4415.413–70 Policy.

It is FEMA policy to use information contained in proposals only for evaluation purposes unless information (a) is generally available to the public, (b) is already the property of the Government, (c) is already available to the Government with unrestricted use rights, or (d) is or has been made available to the Government without restriction.

4415.413–71 Release of information during the solicitation phase.

No information shall be released during the solicitation phase, except as follows: Each solicitation for a negotiated acquisition shall name an individual in the contracting office to respond to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions whether of a procedural or substantive nature shall be directed to that individual. No one else shall exchange comments with offerors or potential offerors. Questions requiring clarification of substantive portions of the solicitation shall be answered by amendment of the solicitation. A copy of the amendment shall be sent to each recipient of the solicitation.

4415.413–72 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed as soon as practicable after contract award. The one remaining copy of each shall be retained in the official contract file.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use is given to the Government regardless of its success in the competition.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.

This subpart sets forth procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

4415.505–1 Content of unsolicited proposals.

FEMA's Appropriation Act (Public Law 100—404, Section 407) requires the contractor to cost share if a research contract results from an unsolicited proposal. This requirement may be waived only when it would not be equitable for the Government to require cost sharing. To waive, (a) the offeror must certify in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost on such projects; and (b) the contracting officer must make a written determination that there is no measurable gain to the performing organization and no mutuality of interest. This determination shall be placed in the contract file. (See 4416.303.)

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4415.505–2 Unsolicited renewal proposals.

Renewal proposals, i.e., those for the extension or augmentation of current contracts, are subject to the same FAR and FEMA regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

[55 FR 28207, July 10, 1990]

4415.506 Agency procedures.

(a) The Office of Acquisition Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals. Unsolicited proposals and requests for additional information regarding their preparation shall be submitted to: Federal Emergency Management Agency, Office of Acquisition Management, Policy & Evaluation Division, 500 C Street SW, room 726, Washington, DC 20472.

(b) Unsolicited proposals submitted to FEMA program, regional or field offices, or misdirected proposals, shall be immediately fowarded by recipients to the Headquarters Office of Acquisition Management.

(c) Unsolicited proposals shall be submitted in an original and five copies at least six months in advance of the date the offeror desires to begin work so that there will be enough time to evaluate the proposal and negotiate a contract.

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4415.506–1 Receipt and initial review.

(a) The Office of Acquisition Management shall acknowledge an unsolicited proposal. Simultaneously, copies of the proposal shall be sent to the appropriate program offices for evaluation.

(b) *Information Requirements.* The Office of Acquisition Management shall keep records of unsolicited proposals received and shall provide prompt status information to requestors. The records shall include, as a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year, the identity of the proposers and the office to which each was referred. These numbers shall be broken out by source (large business, small business, university, or nonprofit institutions).

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

Subpart 4415.6—Source Selection

SOURCE: 55 FR 28207, July 10, 1990, unless otherwise noted.

4415.612 Formal source selection.

4415.612–70 Scope.

(a) Formal source selection procedures shall apply to competitively negotiated acquisition when the estimated cost exceeds $25,000.

(b) Formal source selection procedures do not apply to the acquisition of Architect-Engineer Services, acquisition from other Government agencies (including State and local), or any other acquisition which is specifically exempted by the Director.

4415.612–71 Key participants.

(a) A proposal evaluation team shall be formed to conduct the technical evaluation of proposals. For acquisitions estimated to cost $10 million or less, the team shall be called the Technical Evaluation Panel (TEP) and shall consist of at least three (3) voting members. For acquisitions in excess of $10 milion, or those whose estimated cost does not exceed $10 million, but the selected source is likely to receive funding for future phase(s) of the same project, and the aggregate amount of such funding (including the current acquisition) is estimated to exceed $10 million, the team shall be called the Source Evaluation Board (SEB) and shall consist of at least five (5) voting members.

(b) The Source Selection Official or the Contracting Officer, depending upon the dollar amount of the proposed award and any anticipated additions to it, shall select a source for contract award. For acquisitions estimated to exceed $10 million, the program head, i.e., Associate Director/Administrator, of the acquiring office shall be the Source Selection Official. For acquisitions estimated to cost $10 million or less, the Contracting Officer shall be the Source Selection Official.

Subpart 4415.8—Price Negotiation

4415.803 General.

When all efforts to get a contractor to agree to a reasonable price or fee have failed, the contracting officer shall refer the matter to the head of the contracting activity.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

4415.1003 Debriefing of unsuccessful offerors.

Any unsuccessful offeror may write for a debriefing within two months after contract award. The contracting officer shall provide the debriefing.

PART 4416—TYPES OF CONTRACTS

Subpart 4416.3—Cost-Reimbursement Contracts

Sec.

4416.303 Cost-sharing contracts.

Subpart 4416.6—Time-and-Materials, Labor—Hour, and Letter Contracts

4416.603 Letter contracts.
4416.603–3 Limitations.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31321, Aug. 1, 1985, unless otherwise noted.

Subpart 4416.3—Cost-Reimbursement Contracts

4416.303 Cost-sharing contracts.

(a) This subsection sets forth basis guidelines governing cost-sharing contract.

(b)(1) Cost sharing with non-Federal organizations shall be encouraged in contracts for basic or applied research in which both parties have considerable interest.

(2) Contracting officers shall assure themselves of the following in determining contract type:

(i) The research effort has more than minor relevance to the non-Federal activities of the performing organization and is not primarily a service to the Government.

(ii) The performing organization has adequate non-Federal sources of funds from which to make a cash contribution.

(iii) The performing organization is engaged primarily in production or other service activities, as opposed to research and development, and is in a favorable position to make a cost contribution.

(iv) The principal purpose of the contract is research.

(v) Payment of the full cost of the project is not necessarily in order to obtain the services of the particular organization.

(3) FEMA's Appropriation Act requires cost sharing by the contractor under research contracts resulting from unsolicited proposals. See 4415.505–1.

(c) Guidelines for determining the amount of cost sharing.

(1) For educational institutions and other not-for-profit or non-profit organizations, cost sharing may vary from 1 to 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic-year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from 1 percent or less to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. Recognize, however, that organizations predominately engaged in research and development with little other activity may not be able to derive a monetary benefit from the research under Federal agreements.

(3) A fee will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing normal fees on the research. However, if the research is expected to be of major value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated shall contain the clause in 4452.216–70.

[50 FR 31321, Aug. 1, 1985, as amended at 55 FR 28208, July 10, 1990]

Subpart 4416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

4416.603 Letter contracts.

4416.603–3 Limitations.

A letter contract may be used only if the head of the contracting activity executes a determination and finding that no other contract type is suitable.

PART 4417—SPECIAL CONTRACTING METHODS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4417.70—General

4417.7001 Preference for local contractors.

(a) This subsection establishes policies relating to local contractor preference to receive contract awards resulting from competitive solicitations under a Presidentially declared major disaster or emergency operation.

(b) The geographic areas to which local contractor preference shall apply are those affected by the Presidentially declared disaster and designated in the FEDERAL REGISTER by the Associate Director, State and Local Programs and Support, or his designee. Geographical areas shall be identified by county or other political subdivision.

(c) Pursuant to the provisions of Pub. L. 93–288, the provisions set forth in 4452.217–70 shall be included in each competitive solicitation for disaster relief response.

(d) If the contracting officer determines it to be in the best interest of the Government, the provision set forth in 4452.217–70 need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the contracting activity.

(e) If the contracting officer makes the determination of paragraph (d) of this section, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus area if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Dividing large requirements into several smaller requirements.

[50 FR 31322, Aug. 1, 1985]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4419.2—Policies

4419.201 General policy.

(a) The Director, Office of Personnel and Equal Opportunity, is also the Director, Office of Small and Disadvantaged Business Utilization.

(b) The Chief, Policy and Evaluation Division, Office of Acquisition Management, is the small business technical advisor.

(c) Each contracting officer is a small and disadvantaged business utilization specialist.

[50 FR 31322, Aug. 1, 1985, as amended at 55 FR 28208, July 10, 1990]

PART 4424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4424.2—Freedom of Information Act

4424.202 Policy.

FEMA's Freedom of Information Act policy is codified at 44 CFR part 5.

[50 FR 31322, Aug. 1, 1985]

PART 4426—OTHER SOCIOECONOMIC PROGRAMS

Sec.

4426.101 General policy.
4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4426.101 General policy.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits Federal agencies from discriminating against qualified persons on the grounds of disability. The law not only applies to internal employment practices but extends to agency interaction with members of the public who participate in FEMA programs. (FEMA's implementation of section 504 of this Act is codified at 44 CFR part 16.)

[55 FR 28208, July 10, 1990]

4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

It is FEMA's policy to extend the provisions of the Rehabilitation Act of 1973, as amended, to vendors who interact with the public while under contract to FEMA. Therefore, FEMA Clause 4452.226–01, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, shall be included in FEMA contracts over $25,000 when in the performance of such contract the contractor will plan meetings, seminars and conferences which may be attended by persons with disabilities.

[55 FR 28208, July 10, 1990]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 4429—TAXES

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4429.1—General

4429.101 Resolving tax problems.

(a) The Office of General Counsel is responsible, with FEMA, for handling all tax problems. It also is responsible for asking the Department of Justice for representation of intervention in proceedings concerning taxes.

(b) The contracting officer shall request, in writing, the assistance of the Office of General Counsel in resolving a tax problem. The request shall detail the problem and include supporting information. The Office of General Counsel shall inform the contracting officer of the disposition of the tax problem and the contracting officer will tell the contractor.

[50 FR 31322, Aug. 1, 1985]

PART 4432—CONTRACT FINANCING

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4432.4—Advance Payments

4432.402 General.

The head of the contracting activity has responsibility and authority to make findings and determinations and to approve or disapprove contract terms.

[50 FR 31322, Aug. 1, 1985]

PART 4433—PROTESTS, DISPUTES AND APPEALS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4433.103—Protests to the Agency

4433.103 Protests to the agency.

(a) Protests should be filed on a timely basis to the Contracting Officer specified in the solicitation or contract. Protests are considered timely if, when based on alleged improprieties in a solicitation which are apparent prior to the bid/proposal closing time, they are filed not later than the closing date, and in other cases they are filed within 10 working days after the basis of the protest is known or should have been known whichever is earlier.

(b) If a protest is received prior to award, the Contracting Officer shall notify all offerors within one full working day after consultation with the Office of General Counsel (OGC). An award will not be made unless a written determination is approved by the Head of the Contracting Activity in accordance with the criteria set forth in FAR 33.103.

(c) If a protest is received after award, the Contracting Officer shall give careful consideration to suspending contract performance if it appears likely that the award may be invalidated and the Government's interest will not be harmed by a delay in the receipt of goods or services. The Contracting Officer's determination to suspend performance should be made in writing and approved by the Head of the Contracting Activity after consultation with OGC. If the decision is to proceed with contract award or continue with contract performance, the Contracting Officer shall include the written findings in the file and shall give written notice of the decision to the protestor and other interested parties.

(d) The Contracting Officer/Contract Specialist shall prepare the final decision for approval by the Head of the Contracting Activity. The protestor shall be notified of the final decision regarding its protest within 30 working days after receipt of the protest.

[55 FR 28208, July 10, 1990]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 4435—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4435.003 Policy.

Cost-sharing policy for research and development contracts is stated in 4415.502–70.

[50 FR 31322, Aug. 1, 1985]

PART 4436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 4436.6—Architect-Engineer Services

Sec.
4436.602–2 Evaluation boards.
4436.602–4 Selection authority.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4436.6—Architect-Engineer Services

4436.602–2 Evaluation boards.

(a) Each architect-engineer evaluation board, permanent or ad hoc, shall have at least five voting members and one alternate. These will be Federal employees. A majority of the voting members will be from the program office.

(b) During the selection process, a board member or advisor may have, or appear to have, a conflict of interest regarding a firm in the competition. Immediately upon becoming aware of a potential conflict or an appearance of a conflict, the member or advisor shall notify the board chairperson who shall, in turn, inform the Office of General Counsel. The Office of General Counsel shall make a final determination on the conflict issue.

(c) The evaluation board is to be insulated from outside pressures. Information concerning board deliberations shall be divulged only to persons having a need-to-know.

[50 FR 31322, Aug. 1, 1985]

4436.602–4 Selection authority.

(a) Heads of program offices which may require architect-engineer services are designated as selection authorities for acquisition of architect-engineer services.

(b) A determination shall be sent to the contracting officer listing the selected firms in order of preference.

[50 FR 31322, Aug. 1, 1985]

PART 4450—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

Sec.
4440.201 Delegation of authority.
4450.202 Contract adjustment boards.

AUTHORITY: 50 U.S.C. 1431–1435; E.O. 10789; E.O. 12148.

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

4450.201 Delegation of authority.

All authority granted by 48 CFR 50.101 may be exercised by the Director of the Federal Emergency Management Agency. Such authority to approve, authorize, and direct appropriate action under this Part and to make all appropriate determinations and findings which do not obligate the United States in excess of $50,000 are delegated to the Director, Office of Acquisition Management. Such authority to approve, and direct appropriate action under this Part and to make all appropriate determinations and findings which may obligate the United States in excess of $50,000 are delegated to the FEMA Contract Adjustment Board. The limitations contained in 48 CFR 50.201 and 50.202 apply.

[50 FR 31322, Aug. 1, 1985]

4450.202 Contract adjustment boards.

As cases arise under the Act, the Director of FEMA may appoint, as needed, a FEMA Contract Adjustment Board consisting of one senior staff

member, not otherwise involved with the action under consideration, from each of the following offices:

(a) Acquisition Management, who shall act as Chairperson

(b) General Counsel

(c) Comptroller.

[50 FR 31322, Aug. 1, 1985]

SUBCHAPTER H—CLAUSES AND FORMS

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 4452.2—Texts of Provisions and Clauses

Sec.
4452.216–70 Consideration and payment (Cost-Sharing).
4452.217–70 Preference for local contractors in Presidentially declared major disasters or emergencies.
4452.226–1 Accessibility of meetings, conferences and seminars to persons with disabilities.
4452.227–70 Reproduction of reports.
4452.227–71 Coordination of federal reporting requirements.
4452.227–72 Publication.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31323, Aug. 1, 1985, unless otherwise noted.

Subpart 4452.2—Texts of Provisions and Clauses

4452.216–70 Consideration and payment (Cost-Sharing).

As prescribed in 4416.303, include the following clause in research and development contracts with non-Federal organizations:

CONSIDERATION AND PAYMENT (COST-SHARING) (MAR 1989)

(a) The estimated cost for the performance of this contract is $_____. The contractor agrees to bear without reimbursement by the Government ___% of the cost for performance hereunder. Such cost sharing shall be effected as set forth in paragraph (b) of this clause.

(b) Public vouchers or invoice shall be submitted in an original and five (5) copies and shall show the total cost incurred for the period for which the voucher or invoice is submitted, the cumulative total of costs incurred through the billing period, and the percentage of costs to be reimbursed by the Government. However, the Government is not obligated to reimburse the contractor for the Government's share of the costs in excess of _____% of such amount. The Government shall not be obligated to reimburse the contractor for the Government's share of the costs in excess of $_____ nor is the contractor obligated by this contract to expend his own funds in excess of $_____.

(End of clause)

[55 FR 28208, July 10, 1990]

4452.217–70 Preference for local contractors in Presidentially declared major disasters or emergencies.

Pursuant to the provisions of Pub. L. 93–288 and 4415.105–71, the following provisions shall be included in each competitive solicitation for on-site disaster relief response:

PREFERENCE FOR LOCAL CONTRACTORS (APR 1984)

In awarding any contract pursuant to this solicitation, the Government shall give preference to local organizations, firms, and individuals residing or doing business primarily in the geographic area identified as the disaster area.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

An offeror for which eligibility is established (local offeror) shall be permitted to meet the lowest price received from an otherwise eligible non-local offeror, provided that the proposed price from the local offeror does not exceed 130 percent of the price of the non-local offeror. The lowest priced local offeror within 130 percent of the lowest non-local offeror shall have the first chance to meet the non-local price. If the local offeror meets the lowest non-local price and is determined to be responsible, award shall be made. If the non-local offer is not met, the next lowest local offeror within 130 percent shall have the chance to meet the lowest non-local price. This process shall continue until award is made to a local offeror within the 130 percent requirement or the supply of local offerors is exhausted and award made to the lowest non-local offeror.

(End of clause)

4452.226–1 Accessibility of meetings, conferences and seminars to persons with disabilities.

Include the following clause in contracts under which the contractor will plan meetings, conferences and seminars which may be attended by persons with disabilities.

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (JAN 1989)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the Contracting Officer for approval prior to initiating action. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site one 12′ wide space must be set aside for the car of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means must be available to assist disabled attendees. Alternate means must be satisfactory in the judgment of the Contracting Officer.

(2) *Entrances.* (i) ''Entrances'' shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1″ rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30″ in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29″ wide by 45″ long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30″ in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the Contracting Officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30″ in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29″ wide by 45″ long. A space 60″ by 60″ or 63″ by 56″ of unobstructed floor space as measured 12″ above the floor is acceptable by standard; other layout will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29″ wide by 45″ long (by standard, the minimum is 3′−0″ by 43′−83″), with outswinging door or private curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is conveniently located hereby, whichever is satisfactory to the Contracting Officer.

(ii) Overnight facilities shall provide for the same minimum accessibility requirements as the facility utilized for guest room access from the main entrance area shall be level, ramped at an independently negotiable

incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29″ wide by 45″ long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30″ in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) Provisions of Services for Sensory Impaired Attendees.

(1) The Contractor, in planning the meeting, conference, or seminar shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide onsite teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the non-represented group, or groups, is not required.

(Approved by the Office of Management and Budget under control number 3067–0213)

(End of clause)

[55 FR 28208, July 10, 1990]

4452.227–70 Reproduction of reports.

Include the following clause in the contract when the product is a report, data or other written material.

REPRODUCTION OF REPORTS (APR 1984)

Reproduction of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8½×11 inches or less, printed on one side only, and in one color. All copy preparation to produce camera-ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used on single-unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera-ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written material.

(End of clause)

4452.227–71 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

COORDINATION OF FEDERAL REPORTING SERVICES (APR 1984)

In the event that it is a contractual requirement to collect information from 10 or more public respondents, the provisions of 44 U.S.C. chapter 35 (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain

through the project Officer the required office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefore shall be in writing signed by the Contracting Officer.

(End of clause)

4452.227–72 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product.

PUBLICATION (APR 1984)

(a) Definition. For the purpose of this clause ''publication'' includes (1) any document containing information intended for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) General. The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or other such means as the Director of the Federal Emergency Management Agency shall determine.

(c) Reports furnished the Government. All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) Publication by Government. The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) Publication by contractor on technical personnel.

(1) Publication in whole or in part of contractor's reports furnished the Government. Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions and the conditions in paragraph (e)(4) and paragraph (f).

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) Publication, except vebatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder. The contractor or technical personnel may issue a publication concerning or based in whole or in part on the results of the research and development and studies conducted under this contract and may secure copyright therein, but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish, in such manner as he may deem to be in the public interest, the results of such research and development and studies to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

(3) General conditions if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance. If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractor's reports or publication concerning or based in whole or in part on the results of the research and development and

studies hereunder shall be made without the written consent of the contracting officer.

(4) Copies of contractor and technical personnel publications to be furnished the Government. The contractor or technical personnel will furnish the contracting officer six copies of any publications which are based in whole or in part on the results of the research and development and studies conducted under this contract.

(f) Administratively confidential information. The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record any information or data obtained hereunder from private individuals, organizations, or public agencies in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) Inclusion of provisions in contractor's agreements. The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study thereunder.

(End of clause)

CHAPTER 51—DEPARTMENT OF THE ARMY ACQUISITION REGULATIONS

(Parts 5100 to 5199)

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PART 5108—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35 and DOD FAR Supplement 201.301.

5108.070 Definitions.

As used in this section:

Memorandum of Understanding Planned Producer means an industrial firm which has indicated its willingness to produce specified military items in a declared national emergency by completing a Memorandum of Understanding with an accompanying Industrial Preparedness Program Production Capacity Survey (DD Form 1519 TEST). The firm is eligible to be solicited for all buys of the item(s) over $25,000 excluding acquisitions for which competition is restricted to the Restricted Specified Base or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

Limited Fee Planned Producer means an industrial firm which is contractually bound by inclusion of AFARS 5152.208–9001 in their contract to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency or in the event of a declared national emergency or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over $25,000 except acquisitions for which competition is restricted to the Restricted Specified Base in accordance with an approved Justification and Approval.

Restricted Specified Base Planned Producer means an industrial firm which is contractually bound to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency, or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over $25,000.

(g)(1)(i) Solicitation of Memorandum of Understanding Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Memorandum of Understanding Planned Producer except those restricted to the Restricted Specified Base Planned Producers or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

(ii) Solicitation of Limited Fee Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Limited Fee Planned Producer, except those restricted to the Restricted Specified Base.

(iii) Solicitation of Restricted Specified Base Planned Producers in all acquisitions over $25,000 which are for items for which they have been designated as a Restricted Specified Base Planned Producer.

(g)(4) The clause at 5152.208–9001 is to be used for all contracted planning efforts.

[54 FR 38682, Sept. 20, 1989]

PART 5119—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 5119.10—Small Business Competitiveness Demonstration Program

Sec.

5119.1001 General.
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5119.1003 Purpose.
5119.1004 Participating agencies.
5119.1005 Applicability.
5119.1070 Procedures.
5119.1070–2 Emerging small business set-aside.
5119.1070–3 Identification and reporting.
5119.1071 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR 1.301 and DOD FAR Supplement 201.301.

SOURCE: 54 FR 15410, Apr. 18, 1989, unless otherwise noted.

Subpart 5119.10—Small Business Competitiveness Demonstration Program

5119.1001 General.

This subpart implements Pub. L. 100–656, section 722, ''Expanding Small Business Participation in Dredging''

(the Dredging Program). The Program will be conducted through 30 September 1992.

5119.1002 Definitions.

(S–90) ''Emerging Small Business Reserve Amount'' (ESBRA) means the dollar threshold for contracting opportunities in dredging, below which competition shall be conducted exclusively among emerging small business concerns. This amount is set forth in 5119.1070–2(a)(S–90).

5119.1003 Purpose.

(c)(S–90) The purpose of the Dredging Program is to—

(i) Expand small business and emerging small businesses (ESB) participation in contracting opportunities for dredging through restricted competition.

(ii) Demonstrate the existence of a sufficient number of small businesses and ESBs which meet the current size standard for Standard Industrial Code (SIC) Code 1629 (Dredging and Surface Cleanup Activities) as an indicator of the adequacy of the current size standard.

5119.1004 Participating agencies.

Participation in this Dredging Program is limited to the Department of the Army, Corps of Engineers.

5119.1005 Applicability.

(S–90) The program shall apply to solicitations issued by the Department of the Army Corps of Engineers buying activities for the procurement of dredging under SIC 1629 (Dredging and Surface Cleanup Activities), limited to Federal Procurement Data Systems (FPDS) codes Y216 and Z216. This includes both maintenance dredging and new start (new work) construction dredging. Dredging to be performed by Government forces utilizing the Federally owned fleet pursuant to 33 U.S.C. 622 is not subject to the program.

5119.1070 Procedures.

5119.1070–2 Emerging small business set-aside.

(a)(S–90) Solicitations for dredging shall be set-aside for exclusive competition among ESBs when the estimated award value is equal to or less than the emerging small business reserve amount (ESBRA) of $600,000. (Except that dredging acquisitions shall continue to be considered for placement under the 8(a) program (see FAR subpart 19.8) and for small disadvantaged business set-asides (see DFARS 219.502–72)). The ESBRA applies only to new awards. Modifications or follow-on awards to contracts having an initial award value in excess of the ESBRA are not subject to this requirement. The set-aside requirements in DFARS 219.1070–2 (a) and (b) for designated industry groups acquisitions valued at $25,000 or less shall be complied with for all dredging program set-asides.

(S–90) The contracting office shall include the applicable SIC Code and dollar size standard in the synopsis of proposed procurement as published in the Commerce Business Daily (CBD), in the presolicitation notice (construction contract) SF 1417 when issued, and in the solicitation documents.

(S–91) The contracting officer shall consider use of the following initiatives to increase participation by small businesses and emerging small businesses:

(1) Specifying of contract requirements and contractual terms and conditions which are conducive to competition among small business and emerging small business concerns, consistent with the mission or program requirements of the Department of the Army, Corp of Engineers.

(2) Encouraging joint ventures, teaming agreements, and similar arrangements consistent with the Small Business Act (15 U.S.C. 637(d)) for the purpose of including small business concerns in contracting opportunities. However, no such joint venture shall exceed the applicable size standard.

(3) Making maximum use of subcontracting through plans negotiated and enforced pursuant to section 8(d) of the Small Business Act. Goals may be specified in solicitations stating minimum percentages of subcontracting.

5119.1070–3 Identification and reporting.

(b) Reporting shall be done in accordance with DFARS 204.6 designated industry group requirements. Block

B12A, DD Form 350, shall contain either the FPDS Code Y216 or Z216, as applicable, per 5119.1005 (S–90).

5119.1071 Solicitation provisions and contract clauses.

(a) DFARS provision 252.219–7012 shall be inserted in all solicitations issued under the Small Business Dredging Program (SIC 1629, limited to FPDS Service Codes Y216/Z216).

(b) DFARS clause 252.219–7013 shall be inserted in all solicitations and contracts set-aside for emerging small businesses in accordance with 5119.1070–2(a) (S–90).

PART 5145—GOVERNMENT PROPERTY

5145.301 Definitions.
5145.302–3 Other contracts.
5145.303 Providing material.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

SOURCE: 54 FR 39538, Sept. 27, 1989, unless otherwise noted.

5145.301 Definitions.

Other Government Property means all property, other than Special Use Property as defined below, which may be offered to a contractor for use in performance of installation support services contracts.

Special Use Property means property that is (a) ''agency peculiar property'', (b) necessary for mobilization requirements; or (c) property for which it has been determined that title should remain with the Government.

5145.302–3 Other contracts.

(S–90)(1) When it is determined that contractor use of existing Government facilities, other than special use property, in the performance of installation support services contracts, is in the best interest of the Government, the Government facilities will be offered to a contractor for use in the performance of the Government contract. Facilities provided to a contractor under this authority will not be replaced by the Government when they can no longer be used by the contractor. Nevertheless, it will be the contractor's responsibility to continue performance in accordance with the terms of the contract.

(2)(i) New facilities shall not be purchased in order to provide them to contractors. Prior to offering existing facilities under this authority, a contracting officer shall make a written determination, based on the detailed justification provided by the approving officials and program/project manager, that such use is in the best interest of the Government. The written determination shall be kept in the contract file.

(ii) Existing facilities offered for contractor use will be offered to all bidders/offerors for their consideration in the preparation of their bids and offers. Bidders/offerors may choose to use any or all of the facilities offered.

(3) When it is determined that contractor use of special use property in the performance of installation support services contracts is in the best interest of the Government, such property will be provided. It will be accounted for and managed under the appropriate Government property clause. For example, FAR 52.245–2 for fixed-price contracts or FAR 52.245–5 for cost-reimbursement contracts and any appropriate provision from FAR 52.245–11, Facilities Use Clause.

(S–91) Required Government property clauses for other than facilities contracts.

(1) In addition to the clauses at FAR 52.245–2 and 52.245–19, the Contracting Officer shall insert the clause at 5152.245–9000, Government Property for Installation Support Services (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and Government property will be provided without being replaced by the Government.

(2) The Contracting Officer shall insert the clause at 5152.245–9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), in solicitations and contracts when a cost-reimbursement type contract is contemplated and the Government property will be provided without being replaced by the Government.

5145.303 Providing material.

(S–90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303–1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245–2 for fixed-price and FAR 52.245–5 for cost-reimbursement type contracts.

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

5152.208–9001 Industrial preparedness planning.
5152.245–9000 Government property for installation support services (fixed-price contracts).
5152.245–9001 Government property for installation support services (cost-reimbursement contracts).

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

5152.208–9001 Industrial preparedness planning.

As prescribed at 5108–070(g)(4) insert the following clause in full text in contracts where the contractor is designated a Limited Fee Planned Producer.

INDUSTRIAL PREPAREDNESS PLANNING (XXX 1989) (DEV)

(a) The Government designates the contractor a Limited Fee Planned Producer (LFPP) for the item(s) listed in paragraph (e) of this clause. As an LFPP for the listed items, the contractor will be solicited for all acquisitions over $25,000 which are for the item(s), excluding those for which competition is restricted to the Restricted Specified Base pursuant to an approved Justification and Approval. The Government reserves the right to obtain the item(s) listed from sources other than the commercial marketplace, i.e. by assigning workload to a government-owned facility.

(b) The Contractor agrees to:

(i) Update the Production Capacity Survey DD Form 1519 TEST for each item biennially;

(ii) Accomplish subcontractor planning as required in paragraph (f) of this clause;

(iii) Permit Government personnel access to records, manufacturing process data, plants and facilities in order to verify data on the Production Capacity Survey DD Form 1519 TEST.

(iv) Maintain the surge/mobilization capacity set forth in the Production Planning Schedules during active production of the item and for a period of (negotiated number) years after physical completion of this production contract.

(c) The Contractor is aware of the Government's dependence upon the Production Planning Schedules as a basis to take appropriate measures to ensure the adequacy of the United States Industrial Base. The Contractor also recognizes the Government's intention to convert Production Planning Schedule to contracts on a selective basis, as may be required to minimize materiel shortages during mobilization or to meet contingencies short of a declared national emergency. The Contractor agrees to accept contracts for the item(s) in accordance with the Production Planning Schedules. In the event mobilization or contingencies short of a declared national emergency occur after active production has ceased, and the allocated capacity is in use for the production of other item(s), the Contractor agrees to immediately discontinue production of such other item(s) if necessary to meet production schedules for the planned item(s). The Contractor further recognizes that it is the Government's intention to require that planned subcontractor support will be similarly converted to production subcontracts. Production delivery obligations under this clause are governed by Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*) (Defense Production Act) and as applicable are within the purview of the Defense Priorities and Allocation System.

(d) For the listed item(s), the Contractor certifies by signing this contract that the plant capacity required to support the mobilization quantity listed on the Production Capacity Survey DD Form 1519 TEST will be dedicated exclusively for the production of that item at mobilization. Furthermore, the Contractor certifies that this capacity is not shared by any other mobilization production requirements.

(e) This clause covers the item(s) listed below:

Item schedule No.	Item nomenclature (sample)
M11111	Fuze, Rocket MK987.
M22222	Machine Gun, MK35.

(f) Subcontractors, suppliers and vendors provide many of the components of military end items. The lack of critical components could be one of the major limitations of the United States' ability to support its Armed Forces warfighting capabilities. Therefore, the Government designated critical components and/or subassemblies in Block #27 of the attached Production Capacity Survey (DD Form 1519 TEST) are those for which the Contractor will conduct vertical planning if not produced in-house. Additional critical components and/or subassemblies may be identified by the Contractor in block #21 of the attached Production Capacity Survey (DD Form 1519 TEST). Foreign producers (other than Canada) will not be considered as a source of supply for critical components. Mandatory vertical (subcontractor) planning will be accomplished by the ASPPO and the Contractor for all critical components identified on the Production Capacity Survey, (DD Form 1519 TEST), by using a sub-tier Production Capacity Survey (DD Form 1519 TEST). The Contractor agrees to coordinate completion of the DD Form 1519 TEST and finalize prime and subcontractor planning with the Armed Services Production Planning Officer (ASPPO) having cognizance over the prime contractor's facility.

(g) After completion of active production of the item(s), the Government will annually, or as changes occur but not more than annually, furnish the Contractor updated technical data for the item. The Contractor agrees to review the technical data and to report to the Government within 60 days of receipt of the data, the impact of technical changes, if any, to the current Production Planning Schedules at no additional cost to the Government.

(h) Retention by the Contractor of the surge/mobilization capacity set forth in the Production Planning Schedules after completion of active production of the planned item(s) will not necessarily require that the Contractor maintain such capacity in idle status. Contractor utilization of capacity allocated for planned production for production of other non-planned items is consistent with the intent of any postproduction provisions of this contract, provided no degradation of surge/mobility capacity occurs as a result, and provided that the approval of the Contracting Officer with property cognizance is obtained for the use of any Government-owned property.

[54 FR 38683, Sept. 20, 1989]

5152.245–9000 Government property for installation support services (fixed-price contracts).

As prescribed in 5145.302–3(91), insert the following:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (FIXED-PRICE CONTRACTS) (OCT 1989) (DEV)

The Government property listed at Technical Exhibit ___ is provided ''as is'' to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245–2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245–19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit ___ will be governed by FAR 52.245–2, Government Property (Fixed-Price Contracts), and FAR 52.245–19, Government Property Furnished ''as is''.

(End of clause)

[54 FR 39539, Sept. 27, 1989]

5152.245–9001 Government property for installation support services (cost-reimbursement contracts).

As prescribed in 5145.302–3(S–91), insert the following clause:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (COST-REIMBURSEMENT CONTRACTS) (OCT 1989) (DEV)

(a) *Government-furnished property*. The Government property listed at Technical Exhibit ___ is provided to the contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The

Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property*. The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the contractor. In the case of this withdrawal of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal, the Contractor is obligated to continue performance under this contract.

(c) *Title in Government Property*. (1) Title to the Property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property 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 property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable 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 property*. The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to 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 property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property*. The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contracting officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property Control*. The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR subpart 45.5 in effect on the date 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 property in accordance with sound industrial practice.

(2) No later than 45 days 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 (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.

(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. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is 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 property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is 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 property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contractor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property 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 return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *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 (k) (2) and (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 (f) of this clause.

(3)(i) If the Contractor fails to act as provided by paragraph (k)(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 subparagraph (k)(6). 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 (k) 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.

(l) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

[54 FR 39539, Sept. 27, 1989]

CHAPTER 52—DEPARTMENT OF THE NAVY ACQUISITION REGULATIONS

(Parts 5200 to 5299)

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PART 5215—CONTRACTING BY NEGOTIATION

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

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5215.402 General.
5215.407 Solicitation provisions.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.
5215.608 Proposal evaluation.

Subpart 5215.8—Price Negotiation

5215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

SOURCE: 53 FR 16280, May 6, 1988, unless otherwise noted.

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

5215.402 General.

(a) Competition is the cornerstone of Navy acquisition policy. As such, the preferred and predominant method of pricing in the Navy is through the use of competition, without the need for cost or pricing data and cost analysis. The Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis. This approach is not only consistent with the Competition in Contracting Act (CICA), but it affords the opportunity for significant efficiencies and reduction of procurement leadtime as a result of minimizing the requirement for cost or pricing data and associated audit reports. As competition is increasingly relied upon and the need for cost or pricing data is reduced, there may be a corresponding requirement for performing a cost realism evaluation for many competitive procurements to guard against unrealistically low prices which can lead to quality deficiencies, late deliveries, performance shortfalls, and cost overruns. In performing cost realism evaluation, only the minimum selected data to perform the cost realism evaluation is to be obtained, as opposed to full cost or pricing data which would be required when it is necessary to perform cost-based negotiations, such as in the case of sole source negotiations.

5215.407 Solicitation provisions.

(S–90) During acquisition planning, an assessment shall be made as to the likelihood that adequate price competition will exist. If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215–9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.

(S–90)(1) When a cost realism evaluation will be performed, the source selection evaluation criteria shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.

(2) Technical criteria may include quality standards that are based on either a minimally acceptable approach or a cost/benefit approach. When the quality desired is that necessary to meet minimum needs, proposals should be evaluated for acceptability and award made to the lowest priced, technically acceptable offer. When the quality desired is the highest affordable or that representing the best value, proposals should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality. When a cost/benefit approach is used, cost must carry a weight of not less than 40% unless thoroughly justified.

(3) Cost realism evaluation. (i) Cost realism evaluation involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism evaluation differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price. Data submitted only for cost realism evaluation generally will not be certified.

(ii) The purpose of cost realism evaluation is to:

(A) Verify the offeror's understanding of the requirements;

(B) Assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and

(C) Assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(iii) Some examples of data and information that may be obtained to perform cost realism evaluation are:

(A) Manloading (quantity and mix of labor hours);

(B) Engineering, labor and overhead rates; and

(C) Make or buy plans.

A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

(iv) Cost realism evaluation generally will be performed as a part of the proposal evaluation process (see 5215.605) for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price, labor hour, or time and material type contract, a cost realism evaluation would be the exception and not the rule, although its use may be appropriate where the proposal evaluation process will encompass both a cost/price evaluation and a technical evaluation. Also, where the contracting officer suspects a ''buy-in'' (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism evaluation performed.

(v) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism evaluation. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information from DCAA may be oral or written.

5215.608 Proposal evaluation.

(a) When a cost realism evaluation will be performed in accordance with 5215.605(S–90), the resulting realistic cost estimate shall be used in the evaluation of cost.

Subpart 5215.8—Price Negotiation

5215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *General.* As explained in 5215.402, cost or pricing data would not normally be obtained because the predominant portion of Navy procurements are awarded on the basis of adequate price competition.

(b)(1)(iii) Adequate price competition may also exist where price is a secondary factor in the evaluation of proposals, as long as price is a substantial factor. Price, as used herein, means cost plus any fee or profit applicable to the contract price. Thus, in competitive acquisitions where adequate price competition is contemplated, the contracting officer shall not require the submission of cost or pricing data whether certified or not, as defined in FAR 15.801, regardless of the type of contract.

(b)(3) Examples of contract awards for which prices may be based on adequate price competition and/or to have

been established by adequate price competition are:

(i) Contracts for items for which there are a limited number of sources and the prices at which award will be made are within a reasonable amount of each other and compare favorably with independent Government estimates and with prior prices paid;

(ii) Any contract, including cost-type contracts, when cost is a significant evaluation factor; and

(iii) Contracts for which there are dual sources.

PART 5231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 5231.2—Contracts with Commercial Organizations

Sec.
5231.205 Selected costs.
5231.205–90 Shipbuilding capability preservation agreements.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2501, 10 U.S.C. 7315, DoD Directive 5000.35.

SOURCE: 62 FR 66827, Dec. 22, 1997, unless otherwise noted.

Subpart 5231.2—Contracts With Commercial Organizations

§ 5231.205 Selected costs.

§ 5231.205–90 Shipbuilding capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), the Navy may enter into a shipbuilding capability preservation agreement with a contractor. As authorized by section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

(b) *Definition. Incremental indirect cost,* as used in this subsection, means an additional indirect cost that results from performing private sector work described in a shipbuilding capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a shipbuilding capability preservation agreement is to broaden and strengthen the shipbuilding industrial base by providing an incentive for a shipbuilder to obtain new private sector work, thereby reducing the Navy's cost of doing business. The Navy will use the following guidelines to evaluate requests for shipbuilding capability preservation agreements:

(1) The Assistant Secretary of the Navy for Research, Development and Acquisition must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a shipbuilder is able to obtain.

(2) An agreement generally will be considered only for a shipbuilder with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to the Navy, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by the Navy.

(d) *Cost-reimbursement rules.* If the Navy enters into a shipbuilding capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) The Navy may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, the Navy may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, the Navy will consider factors such as the impact of pre-existing firm-fixed-price Navy contracts on the amount of costs that would be reimbursed by the Navy, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a shipbuilding capability preservation agreement, together with appropriate justification, through the Deputy Assistant Secretary of the Navy for Ships, to the Assistant Secretary of the Navy for Research, Development and Acquisition, who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

PART 5242—CONTRACT ADMINISTRATION

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5242.90—Refunds Requirements (Spares and Support Equipment)

5242.9000 Requests for refunds.

(a) *Policy.* (1) This subpart establishes uniform policy and procedures on requesting refunds for spare parts or items of support equipment. This policy is not intended to diminish the responsibility of Navy contracting personnel to properly price spare parts and items of support equipment. Further, it is not intended to serve as a mechanism for the recovery of excess profits.

(2) In accordance with the guidance set forth in paragraph (c) of this section, contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value as defined in the clause at 5252.242–9000. Refunds shall be requested only for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be requested to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic quantity considerations) or changes in market conditions.

(b) *Examples.* The following are examples of circumstances which may establish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity and circumstances (e.g., urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(c) *Solicitation provisions.* The contracting officer shall insert the clause at 5252.242–9000 in solicitations, Basic Ordering Agreements, and contracts

(as defined in FAR 2.101) which contain or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures and orders under federal supply schedules. If added to existing contracts, the clause will not apply to items or components ordered by the Government prior to the date of incorporation of the clause into the contract. Heads of Contracting Activities (HCAs) are delegated, without power of redelegation, authority to establish monetary thresholds below which refunds will not be requested.

[51 FR 46671, Dec. 24, 1986]

PART 5243—[RESERVED]

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 5252.2—Texts of Provisions and Clauses

5252.215–9000 Submission of cost or pricing data.
5252.242–9000 Refunds.
5252.243–9000—5252.243–9001 [Reserved]

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35, and DFARS subparts 201.3 and 243.1.

SOURCE: 53 FR 16282, May 6, 1988, unless otherwise noted.

Subpart 5252.2—Texts of Provisions and Clauses

5252.215–9000 Submission of cost or pricing data.

As prescribed at 5215.407, insert the following provision:

SUBMISSION OF COST OR PRICING DATA (NOV 1987)

(a) It is expected that this contract will be awarded based upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist in accordance with FAR 15.804–3, the offeror shall provide certified cost or pricing data as requested by the contracting officer.

(End of clause)

ALTERNATE I (NOV 1987)

As prescribed at 5215.407, substitute the following paragraph (b):

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the contracting officer. The offeror shall provide the requested data within[1] calendar days from the date of the contracting officer's request.

(End of clause)

5252.242–9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

REFUNDS (SPARES AND SUPPORT EQUIPMENT) (DEC 1986)

(a) In the event that the price of a spare part or item of support equipment delivered under this contract significantly exceeds its intrinsic value, the contractor agrees to refund the difference. Refunds will only be made for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be made to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic purchase quantity considerations) or changes in market conditions.

(b) For purposes of this clause, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value is defined as the price an individual would expect to pay for the item based upon an economic quantity as defined in FAR 52.207–4, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(c) At any time up to two years after delivery of a space part or item of support equipment, the contracting officer may notify the contractor that based on all information available at the time of the notice, the price of the part or item apparently exceeds its intrinsic value.

(d) If notified in accordance with paragraph (c) of this clause, the contractor agrees to enter into good faith negotiations

[1] To be completed by the contracting officer.

with the Government to determine if, and in what amount, the Government is entitled to a refund.

(e) If agreement pursuant to paragraph (d) of this clause, cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy, subject to the contractor's agreement, may elect to return the item to the contractor. Upon return of the item to its original point of government acceptance, the contractor shall refund in full the price paid. If no agreement pursuant to paragraph (d) of this clause is reached, and return of the item by the Navy is impractical, the contracting officer may, with the approval of the Head of the Contracting Activity, issue a contracting officer's final decision on the matter, subject to contractor appeal as provided in the Disputes clause.

(f) The contractor will make refunds, as required under this clause, in accordance with instructions from the contracting officer.

(g) The contractor shall not be liable for a refund if the contractor advised the contracting officer in a timely manner that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value, and known alternative sources or items, if any, that can meet the requirement.

(h) This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition. This clause also does not apply to any spare part or item of support equipment with a unit price in excess of $100,000; or in excess of $25,000 if the contractor submitted, and certified the currency, accuracy and completeness of, cost or pricing data applicable to the item.

(End of clause)

5252.243–9000—5252.243–9001 [Reserved]

CHAPTER 53—DEPARTMENT OF THE AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT

(Parts 5300 to 5399)

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PART 5315—CONTRACTING BY NEGOTIATION

Subpart 5315.8—Price Negotiation

Sec.
5315.890 Formula pricing agreements (FPA).
5315.890–1 Description.
5315.890–2 Policy.
5315.890–3 Responsibilities.
5315.890–4 FPAs negotiated by other DOD agencies.

AUTHORITY: 5 U.S.C. 301 and FAR 1.301.

SOURCE: 52 FR 12414, Apr. 16, 1987, unless otherwise noted.

Subpart 5315.8—Price Negotiation

5315.890 Formula pricing agreements (FPA).

5315.890–1 Description.

Formula pricing agreements (FPAs), sometimes referred to as spare parts pricing agreements, set forth a pricing methodology and the specific rates and factors to be used when pricing items covered by the FPA. An FPA differs from a Forward Pricing Rate Agreement (FPRA) in that an FPA addresses a pricing methodology limited to a specific group of items and its use by different buying activities is optional; whereas FPRAs are generally limited to agreements on individual rates or factors (including Cost Estimating Relationships (CERs)), apply to many items, and are required to be used by all buying activities. Any pricing agreement made with a contractor shall be considered to be an FPA if it contains the following features:

(a) The agreement governs the pricing methodology of more than one future contract action and identifies the category(s) of purchases to be covered (for example, F–100 replenishment spares).

(b) The pricing agreement is expressed in terms which specify the direct cost inputs and the rates and/or factors to be applied to identified bases plus profit or fee.

5315.890–2 Policy.

FPAs should be established as necessary to ease negotiation of large numbers of contract actions and reduce administrative costs and lead time. However, FPAs shall only be negotiated with contractors having a significant volume of Government business and application normally shall be limited to acquisitions under $100,000. FPAs anticipating individual acquisitions over $100,000, shall be approved by the HCA and shall specifically establish the maximum dollar amount for an acquisition priced using the FPA. Proposals received above $100,000 must be submitted with an SF 1411 and a certificate of current cost or pricing data. All FPAs shall—

(a) Be in writing and signed by a contracting officer;

(b) Only be negotiated with contractors who are under Government inplant contract administration cognizance and have a resident DCAA auditor. (This requirement may be waived with HCA approval);

(c) Not cover cost elements, such as those portions of direct labor and material costs which require discrete estimating and analysis;

(d) Identify all rates/factors that are a part of the FPA; however, the FPA may reference a FPRA(s) as long as the agreement prescribes the effect and treatment of changes in the FPRA;

(e) Provide specific terms and conditions covering expiration date, application, and data requirements (e.g. actual cost data) for systematic monitoring to assure the continuing validity of the agreement;

(f) Provide for cancellation at the option of either party;

(g) Require the contractor to submit to the contracting officer, and to the cognizant contract auditor, any significant change in cost or pricing data, estimating system, or accounting system and its impact on the FPA;

(h) Require the contractor to identify the FPA and the date of the latest certification of cost or pricing data supporting the FPA in each specific pricing proposal where the formula is used. The contractor shall also be required to identify those items that were not priced with the formula if they are commingled in a proposal that contains items priced with the formula;

(i) Provide that the FPA shall not be used if the contractor's purchasing, estimating, or accounting system are disapproved by the Government;

(j) Provide that the contracting officer, or designated representative, may perform detailed cost or price analysis on random samples of proposed items and/or those items that have units which are significantly higher than previous buys;

(k) Be supported by certified cost or pricing data in accordance with FAR 15.804, including the submission of a signed certificate of current cost or pricing data at the time agreement is reached on the FPA (and on an annual basis thereafter), and shall provide that contractual documents for items priced using the FPA, shall include the clause at FAR 52.215–22, ''Price Reduction for Defective Cost or Pricing Data;''

(l) Provide that the price of individual contract actions priced under the FPA shall be adjusted if—

(1) It is found that the cost or pricing data supporting the FPA was not accurate, current, or complete;

(2) The contractor fails to comply with 5315.890–2(g); or

(3) The price was developed through incorrect application of the FPA;

(m) Provide that individual contract actions priced using the FPA shall contain a clause incorporating the FPA by reference; and

(n) Be based on a pricing methodology that ensures that unit prices are in proportion to the item's base cost (see FAR 15.812).

5315.890–3 Responsibilities.

(a) Major commands shall—

(1) Establish appropriate approval level for FPAs;

(2) Maintain a list of FPAs which identifies the company and group of items to be purchased;

(3) Conduct periodic reviews of FPAs and contract actions priced using FPAs; and

(4) Establish agreements with other DOD agency contract administration offices to provide field pricing support, negotiation support, and administrative support of Air Force negotiated FPAs.

(b) Air Force contract administration offices shall—

(1) Comply with the requirements of 5315.890–3(c) for those FPAs negotiated by the administrative contracting officer (ACO) for their own use;

(2) Make any FPA negotiated by the ACO available to any other buying activity for their use;

(3) Provide field pricing support to contracting officers in the evaluation of FPAs;

(4) Participate in the negotiation of FPAs;

(5) Notify the contracting officer, who negotiated the FPA, when conditions arise that may affect the FPA's validity; for example, changes to an FPRA, disapproval of a contractor's purchasing system, and so forth. When appropriate, recommend the FPA be cancelled and renegotiated;

(6) Periodically validate the contractor's compliance with the FPA; and

(7) Monitor rates and factors incorporated into each FPA.

(c) Contracting officers shall—

(1) Be responsible for the negotiation of the FPA and ensure that it complies with the requirements contained in 5315.890–2 (this responsibility may be delegated to the ACO);

(2) Obtain field pricing support, including contract audit and technical reviews, in the evaluation of FPAs;

(3) Prepare a price negotiation memorandum covering the pricing factors used in the FPA;

(4) Request CAO participation in negotiations;

(5) Semi-annually, through the ACO, request the DCAA resident auditor to determine if the contractor is complying with the FPA procedures;

(6) Annually, review the FPA to determine its validity by evaluating recorded cost data, and renegotiate the FPA if appropriate;

(7) Determine the effect of changed conditions that may affect an FPA's validity, cancel FPAs when appropriate, and notify all interested parties upon cancellation of the FPA;

(8) Not use an FPA that has been cancelled;

(9) At a minimum, conduct the following evaluation of each proposal generated under an FPA;

(i) Determine the applicability of the FPA to the items proposed.

(ii) Determine the reasonableness of direct cost inputs to the formula.

(iii) Determine the reasonableness of any non-covered cost proposed, such as nonrecurring costs.

(iv) Compare prices generated by the FPA to prior prices, government estimates, PR estimates, to ensure reasonableness. The existence of an FPA does not relieve the contracting officer from the responsibility of assuring that a price is fair and reasonable;

(10) Conduct detailed cost analysis on random samples of proposed items and/or those items that have unit prices which are significantly higher than previous buys;

(11) Ensure that individual contract actions priced using the FPA comply with the terms of the FPA; and

(12) Comply with 5315.905–1(b)(7)(C) when pricing an undefinitized contractual action using an FPA.

5315.890–4 FPAs negotiated by other DOD agencies.

FPAs negotiated by other agencies shall not be used by any Air Force activity unless they comply with the requirements in 5315.890–2.

PART 5316—TYPES OF CONTRACTS

AUTHORITY: 5 U.S.C. 301 and FAR 1.301.

Subpart 5316.2—Fixed-Price Contracts

5316.203–4 Contract clauses.

(d) *Adjustments based on cost indexes of labor or material.* (3)(iii)(A) When using the abnormal escalation index method, on contracts in excess of $50,000,000, the clause shall provide that contract adjustments will include the compounding effect of actual indices for future periods. Since predicted economic trends have a compounding effect on the scheduled price, when calculating each economic price adjustment (EPA) for costs within a completed period, a further provisional adjustment shall be made to all future period costs. This provisional adjustment shall be calculated using the same percentage decrease (or increase) as was made in the adjustment for the completed period. Provisional adjustments for each period must be liquidated against the final adjustment for each period. For example, the following formula could be used in computing adjustments:

$$\text{Adjustment}=((x-y)/y)\,[z]-s$$

where

x=actual index

y=projected index

z=sum of dollars subject to adjustment for all periods in which a final adjustment has not been made

s=sum of unliquidated provisional adjustments

(B) For those EPA clauses which include a dead band in which no adjustment is make, the upper end of the dead band becomes the projected index value during the times of increasing inflation, and the lower end of the dead band becomes the projected index value during times of decreasing inflation. For those EPA clauses which provide for price adjustments only if the difference between the projected index value exceeds a predetermined threshold (trigger bands), no adjustment will be made for the future periods unless the actual index value exceeds the predetermined threshold. However, when the actual index exceeds the projected index by the predetermined threshold, then an adjustment must be made to future periods.

(C) The above requirement is optional on multinational contracts where the impact of multiple country index recalculations are extremely complex.

[52 FR 6332, Mar. 3, 1987]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 5350—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 5350.4—Residual Powers

Sec.
5350.401 Standards for use.
5350.401–90 Indemnification under Pub. L. 85–804.
5350.403 Special procedures for unusually hazardous or nuclear risks.
5350.403–1 Indemnification requests.
5350.403–2 Action on indemnification requests.
5350.403–90 Analysis for indemnification requests.

AUTHORITY: 5 U.S.C. 301 and FAR 1.301.

SOURCE: 51 FR 40978, Nov. 12, 1986, unless otherwise noted.

Subpart 5350.4—Residual Powers

5350.401 Standards for use.

5350.401–90 Indemnification under Public Law 85–804.

(a) Only the Secretary can grant indemnification under Pub. L. 85–804 and E.O. 10789 as amended.

(b) The Air Force will consider indemnifying contractors under this authority when the risk arises out of an instrumentality or activity which is unusually hazardous or nuclear in nature with risk of loss so potentially great that the contractor's financial and productive capabilities would be severely impaired or disrupted. The indemnified risk shall be precisely defined and directly related to the intrinsically hazardous or nuclear nature of the instrumentality or activity, or to the potentially catastrophic loss. Indemnification may extend beyond the period of contract performance only when the potential for devastating financial loss may result from normal use of the product. Indemnification shall not be provided for other forms of ''product liability'' beyond that resulting from the unusually hazardous or nuclear risks initially defined in the contract.

(c) In addition to paragraph (b) of this section, the Air Force will consider indemnifying contractors against unusually hazardous or nuclear risks with a potential for catastrophic loss for the purpose of furthering programmatic aims in the interest of the national defense. Providing indemnification to further programmatic aims will be considered for only exceptional compelling circumstances. Programmatic aims include, but are not limited to, assuring or obtaining competition, avoiding prohibitive insurance costs or where obtaining insurance is precluded by the release of classified information. Reducing or eliminating the insurance costs charged directly to a program does not in itself establish that insurance costs are prohibitive. Any request for indemnification for programmatic aims must clearly identify the programmatic purposes to be served and how indemnification will serve those purposes.

5350.403 Special procedures for unusually hazardous or nuclear risks.

5350.403–1 Indemnification requests.

Contractor requests for indemnification shall also include the following information:

(a) The risks for which indemnification is sought must be precisely defined and directly related to the intrinsically hazardous or nuclear nature of the instrumentality or activity or to the potentially catastrophic loss. Requests shall focus on only those risks for which insurance is not reasonably available at a reasonable cost or for which indemnification is necessary to further programmatic purposes.

(b) The risks must be related to a specific time-frame for which indemnification is required and must indicate whether the time-frame extends beyond contract performance.

(c) The purposes to be served by indemnifications must be clearly identified and the needs for indemnification substantiated so that the scope and nature of the request may be fully evaluated.

5350.403–2 Action on indemnification requests.

(a)(1) Prior to recommending indemnification, contracting officers shall

ascertain that the contractor maintains financial protection in the form of liability insurance in amounts considered to be prudent in the ordinary course of business within the industry. In addition, the contractor shall submit evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period. A copy of the latest report on the contractor's insurance issued by the cognizant Government reviewing activity (i.e., AFPRO, DCAS, etc.) shall be submitted with the request for indemnification. The fact that insurance will be a direct cost to the program will not in itself be cause for a determination that financial protection is not reasonably available, although the cost of such insurance over and above the contractor's usual and customary cost for insurance will be considered.

(2) Notwithstanding paragraph (a)(1) of this section, there may be cases in which the Air Force will determine to indemnify the contractor only against losses in excess of an identified dollar amount.

(3) Whether certain risks are unusually hazardous or nuclear in nature requires a reasoned judgement based on the facts and circumstances of each case. Considerations which will assist in making that determination include—

(i) Understanding the nature of the risk for which indemnification is being requested and its relation to the product or activity;

(ii) Assuring there is a clear, precise definition of the unusually hazardous or nuclear risk;

(iii) Ascertaining the time-frame for indemnification;

(iv) Identifying the programmatic objectives for providing the indemnification requested such as assuring competition, avoiding prohibitive insurance costs, assuring contractor performance of essential services, or assuring protection of contractors from catastrophic loss where, for security reasons, adequate information cannot be disclosed to insuring activities to establish insurance coverage; and

(v) Determining that the indemnification provided serves the identified programmatic purposes.

(4) Contracting officers shall also assure that the contractor has an adequate, existing, and on-going industrial safety program prior to recommending indemnification. If indemnification is to extend into the period of use of the supplies or equipment, the contracting officer shall assure that the contractor has and maintains adequate system design, production engineering, and quality control procedures and systems. A copy of the current safety report issued by the cognizant Government reviewing activity (i.e., AFPRO, DCAS, etc.) shall be submitted with the request for indemnification.

(5) Requests for indemnification shall be considered on a case-by-case basis and must be supported by all of the data required by FAR 50.403 and this Supplement.

(6) Requests that are based on programmatic objectives shall be submitted over the signature of the Commander or not lower than the Vice Commander of the MAJCOM.

(7) Requests for indemnification authority shall be submitted through channels to HQ USAF/RDC.

(b) Upon receipt of authority to indemnify the agreed upon risk, and prior to inclusion of the appropriate indemnification clause in the contract, the contractor shall provide the PCO with a copy of the certificate of insurance, the policy or other binder evidencing that the insurance coverage required is current and in effect.

5350.403–90 Analysis for indemnification requests.

The following information and analysis shall be included to supplement the information required by FAR 50.403–2:

(a) A clear, precise definition of the risk in establishing the relationship of the system/equipment to the intrinsically hazardous or nuclear nature of the instrumentality or activity.

(b) For risks arising from instrumentalities or activities which are unusually hazardous or nuclear in nature, elaborate on the ''unusually'' hazardous versus hazardous nature. Many private sector activities are hazardous and a clear distinction must be shown.

(c) Dates or measurable activities (e.g., delivery of the last unit) when indemnification will start and stop.

(d) Define the programmatic objectives that cannot be otherwise accomplished and identify the programmatic consequences if indemnification is not granted.

(e) Discuss any deductibles and apportionment of loss provisions in applicable insurance coverages.

(f) When indemnification is to extend beyond acceptance and into the period of use, requests shall include a determination that the contractor has adequate system design, production engineering, and quality control procedures and systems.

(g) A determination by the Commander of the buying activity that indemnification is required to satisfy the programmatic objectives.

CHAPTER 54—DEFENSE LOGISTICS AGENCY, DEPARTMENT OF DEFENSE

(Parts 5400 to 5499)

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PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3

Subpart 5452.2—Texts of Provisions and Clauses

5452.249 Allocation.

The Defense Fuel Supply Center is authorized to use the following clause in domestic and overseas petroleum solicitations/contracts, including those for Canal Zone and Puerto Rico, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

ALLOCATION (DFSC 1995) (DEVIATION) (9F01)

(a) Reduced Supplies.

If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other contractual customers.

(b) Additional Supplies.

If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) Accept an updated pro rata reduction as outlined in (a);

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government; or

(3) Terminate the contract as permitted in (d) below.

(c) Reduced Deliveries.

If the Contractor believes that a law, regulation, or order of a foreign government requires the Contractor to deliver less than the quantity set forth in the Schedule for any location within that country, the Contractor may request allocation in accordance with (a) above. In addition to the criteria in (a) above, the Contractor's request shall cite—

(1) The law, regulation or order, furnishing copies of the same;

(2) The authority under which is imposed; and

(3) The nature of the Government's waiver, exception, and enforcement procedure.

The Contracting Officer will promptly review the matter and advise the Contractor whether or not the need to allocate has been substantiated. If the law, regulation, or order requiring the Contractor to reduce deliveries ceases to be effective, the Contractor shall resume deliveries in accordance with the original Schedule.

(d) If, as a result of reduced deliveries permitted by (a), (b), or (c) above, the Contracting Officer decides that continuation of this contract is no longer in the best interests of the Government, the Government may terminate this contract or any quantity thereunder, by written notice, at no cost to the Government. However, the Government shall not be relieved of its obligation to pay for supplies actually delivered to and accepted by it.

(e) Except as otherwise stated in (b) above, any volumes omitted pursuant to (a) or (b) above shall be deleted from this contract, and the Contractor shall have no continuing obligation, so far as this contract is concerned, to make up such omitted supplies.

(f) For Posts, Camps, and Stations contracts, Department of Energy priority orders and allocation regulations will take precedence over any conflicting provisions of this clause.

(g) For Bulk Fuels contracts, the provisions contained in (a) and (b) above shall be inoperative when the Secretary of Defense makes a written determination that it is essential to the National Defense that the Defense Fuel Supply Center be provided contract volumes exceeding the pro rata amount of product to which it would otherwise be entitled. However, in no case will the Contractor be required, under this contract, to supply more than 100% of the quantity specified in the Schedule.

(End of clause)

[60 FR 21992, May 4, 1995]

CHAPTER 57—AFRICAN DEVELOPMENT FOUNDATION

(Parts 5700 to 5799)

SUBCHAPTER B—ACQUISITION PLANNING

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SUBCHAPTER B—ACQUISITION PLANNING

PART 5706—COMPETITION REQUIREMENTS

AUTHORITY: 40 U.S.C. 474.

Subpart 5706.3—Other Than Full and Open Competition

5706.302–70 Impairment of foreign aid programs.

(a) Full and open competition need not be obtained when it would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief and rehabilitation.

(b) *Application*. This authority may be used for:

(1) An award under section 506(a)(5) of the African Development Foundation Act involving a personal service contractor serving abroad;

(2) An award of $100,000 or less for audit, evaluation or program support services to be provided abroad;

(3) An award for which the President of the Foundation makes a formal written determination, with supporting findings, that compliance with full and open competition procedures would impair foreign assistance objectives, and would be inconsistent with the fulfillment of the Foundation program.

(c) *Limitation*. (1) Offers shall be requested from as many potential offerors as is practicable under the circumstances.

(2) The contract file must include an appropriate explanation and support justifying award without full and open competition, as provided in FAR 6.303, except that determinations made under paragraph (b)(3) of this section will not be subject to the requirement for contracting officer certification or to approvals in accord with FAR 6.304.

[53 FR 5578, Feb. 25, 1988]

CHAPTER 61—GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

(Parts 6100 to 6199)

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PART 6101—RULES OF PROCEDURE OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS (STANDARD PROCEEDINGS)

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6101.32 Reconsideration; amendment of decisions; new hearings [Rule 132].
6101.33 Relief from decision or order [Rule 133].
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APPENDIX TO PART 6101—FORMS NOS. 1–5

Form 1—Notice of Appeal, GSA Form 2465.
Form 2—Notice of Appearance.
Form 3—Subpoena, GSA Form 9534.
Form 4—Government Certificate of Finality.
Form 5—Appellant/Applicant Certificate of Finality.

AUTHORITY: 41 U.S.C. 601–613.

SOURCE: 61 FR 52349, Oct. 7, 1996, unless otherwise noted.

6101.0 Foreword.

(a) The General Services Administration Board of Contract Appeals was established under the Contract Disputes Act of 1978, 41 U.S.C. 601–613, as an independent tribunal to hear and decide contract disputes between government contractors and the General Services Administration (GSA) and other executive agencies of the United States.

(b) As an agency board established under the Contract Disputes Act, the Board is required to ''provide to the fullest extent practicable, informal, expeditious and inexpensive resolution of disputes.'' 41 U.S.C. 607(e). The rules in part 6101 represent the Board's concerted effort to be responsive to this charge in standard proceedings. In further response to this mandate, the Board also uses a variety of techniques intended to shorten and simplify, when appropriate, the proceedings normally used to resolve contract disputes. These techniques are described in part 6102.

(c) As indicated in part 6102, the Board fully supports the use of alternative dispute resolution (ADR) in all appropriate cases. To encourage the prompt, expert, and inexpensive resolution of contract disputes as promoted by the Federal Acquisition Streamlining Act of 1994, Public Law 103–355, 108 Stat. 3243, the Board will also make a Board Neutral available for an ADR proceeding, as described in 6102.4, either before or after the issuance of a decision by a contracting officer of any

agency if a joint written request is submitted to the Office of the Clerk of the Board by the parties.

(d) The Board also conducts proceedings as required under other laws. In all matters before it, the Board will act in accordance with this part and Part 6102 and applicable standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs [Rule 101].

(a) *Scope.* The rules contained in this part and Part 6102 govern proceedings in all cases filed with the Board on or after October 7, 1996, and all further proceedings in cases then pending, except to the extent that, in the opinion of the Board, their use in a particular case pending on the effective date would be infeasible or would work an injustice, in which event the former procedure applies. The Board will look to the rules in this part and Part 6102 for guidance in conducting other proceedings authorized by law.

(b) *Definitions*—(1) *Appeal; appellant.* The term ''appeal'' means a contract dispute filed with the Board. The term ''appellant'' means as party filing an appeal.

(2) *Application; applicant.* The term ''application'' means a submission to the Board of a request for award of costs, under the Equal Access to Justice Act, 5 U.S.C. 504, pursuant to 6101.35. The term ''applicant'' means a party filing an application.

(3) *Board judge; judge.* The term ''Board judge'' or ''judge'' means a member of the Board.

(4) *Case.* The term ''case'' means an appeal, petition, or application.

(5) *Filing.* (i) Any document, other than a notice of appeal or an application for award of costs, is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. A notice of appeal or an application for award of costs is filed upon the earlier of:

(A) Its receipt by the Office of the Clerk of the Board or

(B) If mailed, the date on which it is mailed. A United States Postal Service postmark shall be prima facie evidence that the document with which it is associated was mailed on the date thereof.

(ii) Facsimile transmissions to the Board and the parties are permitted. Parties are expected to submit their facsimile machine numbers with their filings. The Board's facsimile machine number is: (202) 501–0664. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire printed submission. Parties are specfically cautioned that deadlines for the filing of cases will not be extended merely because the Board's facsimile machine is busy or otherwise unavailable at the time on which the filing is due.

(6) *Party.* The term ''party'' means an appeallant, applicant, petitioner, or respondent.

(7) *Petition; petitioner.* The term ''petition'' means a request filed under 41 U.S.C. 605(c)(4) that the Board direct a contracting officer to issue a written decision on a claim. The term ''petitioner'' means a party submitting a petition.

(8) *Respondent.* The term ''respondent'' means the Government agency whose decision, action, or inaction is the subject of an appeal, petition, or appplication.

(9) *Working day.* The term ''working day'' means any date other than a Saturday, Sunday, or federal holiday.

(10) *Working hours.* The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

(c) *Construction.* The rules in this part and part 6102 shall be construed to secure the just, speedy, and inexpensive resolution of every case. The Board looks to the Federal Rules of Civil Procedure for guidance in construing those Board rules which are similar to Federal Rules.

(d) *Rulings, orders, and directions.* The Board may apply the rules in this part and part 6102 and make such rulings and issue such orders and directions as are necessary to secure the just, speedy, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules in this part and part 6102 may be made on the motion or request of any party or on the initiative of the Board.

The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as are just. In making rulings and issuing orders and directions pursuant to the rules in this part and part 6102, the Board takes into consideration those Federal Rules of Civil Procedure which address matters not specifically covered in this part and part 6102.

(e) *Panels.* Each case will be assigned to a panel consisting of three judges, with one member designated as the panel chairman, in accordance with such procedures as may be established by the Board. The panel chairman is responsible for processing the case, including scheduling and conducting proceedings and hearings. In addition, the panel chairman may, without participation by other panel members, decide an appeal under the small claims procedure (6102.2), rule on nondispositive motions (except for amounts in controversy under 6102.2(a)(2)), and dismiss a case if no party objects (6101.28(c)). All other matters, except for those before the full Board under 6101.30, are decided for the Board by a majority of the panel.

(f) *Situs.* The address of the Office of the Clerk of the Board is: Room 7022, General Services Administration Building, 18th and F Streets, NW., Washington, DC 20405. The Clerk's telephone number is: (202) 501–0116. The Clerk's facsimile machine number is (202) 501–0664.

6101.2 Time: enlargement; computation [Rule 102].

(a) *Time for performing required actions.* All time limitations prescribed in the rules in this part and part 6102 or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) *Enlarging time.* Upon request of a party for good cause shown, the Board may enlarge any time prescribed by the rules in this part and part 6102 or by an order or direction of the Board. The exception is the time limit for filing appeals (6101.5(b)(1)). A written request is required, but in exigent circumstances an oral request may be made and followed by a written request. An enlargement of time may be granted even through the request was filed after the time for taking the required action expired, but the party requesting the enlargement must show good cause for its inability to make the request before that time expired.

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by the rules in this part and part 6102 or by order of the Board, the day from which the designated period of time begins to run shall not counted, but the last day of the period shall be counted unless that day is (1) a Saturday, a Sunday, or a federal holiday, or (2) a day on which the Office of the Clerk of the Board is required to close earlier than 4:30 p.m., or does not open at all, as in the case of inclement weather, in which event the period shall include the next working day. Except as otherwise provided in this paragraph, when the period of time prescribed or allowed is less than 11 days, any intervening Saturday, Sunday, or federal holiday shall not be counted. When the period of time prescribed or allowed is 11 days or more, intervening Saturdays, Sundays, and federal holidays shall be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

6101.3 Service of papers [Rule 103].

(a) *On whom and when service must be made.* When a party sends a document to the Board it must at the same time send a copy to the other party by mail or some other equally or more expeditious means of transmittal. Subpoenas (6101.20) and documents filed *in camera* (6101.12(h)) are exceptions to this requirement. Any papers required to be served on a party (except requests for discovery and responses thereto, unless ordered by the Board to be filed) shall be filed with the Board before service or within a reasonable time thereafter.

(b) *Proof of service.* Except when service is not required, a party sending a document to the Board must indicate to the Board that a copy has also been sent to the other party. This may be done by certificate of service, by the notation of a photostatic copy (cc:), or

by any other means that can reasonably be expected to indicate to the Board that the other party has been provided a copy.

(c) *Failure to make service.* If a document sent to the Board by a party does not indicate that a copy has been served on the other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has received a copy and note on the record the fact of inquiry and the response, and may also direct the party that submitted the document to serve a copy on the other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

6101.4 Appeal file [Rule 104].

(a) *Submission to the Board by the contracting officer.* (1) Within 30 calendar days from receipt of notice that an appeal has been filed, or within such time as the Board may allow, the contracting officer shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision which has been appealed, including:

(i) The contracting officer's decision, if any, from which the appeal is taken;

(ii) The contract, if any, including amendments, specifications, plans, and drawings;

(iii) All correspondence between the parties that is relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;

(iv) Affidavits or statements of any witnesses on the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;

(v) All documents and other tangible things on which the contracting officer relied in making the decision, and any correspondence relating thereto;

(vi) The abstract of bids, if relevant; and

(vii) Any additional existing evidence or information deemed necessary to determine the merits of the appeal.

(2) The contracting officer shall serve a copy of the appeal file on the appellant at the same time that the contracting officer files it with the Board, except that

(i) The contracting officer need not serve on the appellant those documents furnished the Board *in camera* pursuant to 6101.12(h), and

(ii) The contracting officer shall serve documents submitted under protective order only on those individuals who have been granted access to such documents by the Board. However, the contracting officer must serve on the appellant a list identifying the specific documents filed *in camera* or under protective order with the Board, giving sufficient details necessary for their recognition. This list must also be filed with the Board as an exhibit to the appeal file.

(b) *Submission to the Board by the appellant.* Within 30 calendar days after filing of the respondent's appeal file exhibits, or within such time as the Board may allow, the appellant shall file with the Board for inclusion in the appeal file documents or other tangible things relevant to the appeal that have not been submitted by the contracting officer. The appellant shall serve a copy of its additional exhibits upon the respondent at the same time as it files them with the Board.

(c) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal, require any party to file other documents and tangible things as additional exhibits.

(d) *Organization of the appeal file.* Appeal file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order within each submission, earliest documents first; bound in a loose-leaf binder on the left margin except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. In addition, the pages within each exhibit shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required. The index

should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board *in camera* or under protective order or otherwise have not been served on every other party.

(e) *Lengthy or bulky materials.* The Board may waive the requirement to furnish other parties copies or duplicates of bulky, lengthy, or outsized materials submitted to the Board as exhibits.

(f) *Use of appeal file as evidence.* All exhibits in the appeal file, except for those as to which an objection has been sustained, are part of the record upon which the Board will render its decision. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal is submitted on the record pursuant to 6101.11, at any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(g) *When appeal file not required.* Upon motion of a party, the Board may postpone or dispense with the submission of any or all appeal file exhibits.

6101.5 Filing cases; time limits for filing; docketing [Rule 105].

(a) *Filing cases.* Filing of a case occurs as provided in 6101.1(b)(5).

(1) *Notice of appeal.* (i) A notice of appeal shall be in writing and should be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the contracting officer's decision. If an appeal is taken from the failure of a contracting officer to issue a decision, the notice of appeal should describe in detail the claim that the contracting officer has failed to decide; the appellant can satisfy this requirement by attaching a copy of the written claim submission to the notice of appeal.

(ii) A written notice in any form, including the one specified in the appendix to this part and part 6102, is sufficient to initiate an appeal. The notice of appeal should include the following information:

(A) The number and date of the contract;

(B) The name of the agency and the component thereof against which the claim has been asserted;

(C) The name of the contracting officer whose decision or failure to decide is appealed and the date of the decision, if any;

(D) A brief account of the circumstances giving rise to the appeal; and

(E) An estimate of the amount of money in controversy, if any and if known.

(iii) The appellant must send a copy of the notice of appeal to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(2) *Petition.* (i) A petition shall be in writing and signed by the petitioner or by the petitioner's attorney or authorized representative. The petition should describe in detail the claim that the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching to the petition a copy of the written claim submission.

(ii) The petition should include the following information:

(A) The number and date of the contract;

(B) The name of the agency and the component thereof against which the claim has been asserted; and

(C) The name of the contracting officer whose decision is sought.

(3) *Application.* An application for costs shall meet all requirements specified in 6101.35(c).

(4) *Other participation.* The Board may, on motion, in its discretion, permit an entity to participate in a case in a special or limited way, such as by filing an *amicus curiae* brief.

(b) *Time limits for filing*—(1) *Appeals.* (i) An appeal from a decision of a contracting officer shall be filed no later

than 90 calendar days after the date the appellant receives that decision.

(ii) An appeal may be filed with the Board should the contracting officer fail or refuse to issue a timely decision on a claim submitted in writing, properly certified if required.

(2) *Applications.* An application for costs shall be filed within 30 calendar days of a final disposition in the underlying appeal, as provided in 6101.35(b).

(c) *Notice of docketing.* Notices of appeal, petitions, and applications will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to all parties.

6101.6 Appearances; notice of appearance [Rule 106].

(a) *Appearances before the Board*—(1) *Appellant; petitioner; applicant.* Any appellant, petitioner, or applicant may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. An individual appellant, petitioner, or applicant may appear in his own behalf; a corporation, trust, or association may appear by one of its officers or by any other authorized employee; and a partnership may appear by one of its members or by any other authorized employee.

(2) *Respondent.* The respondent may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. Alternatively, if not prohibited by agency regulation or otherwise, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.

(b) *Notice of appearance.* Unless a notice of appearance is filed by some other person, the person signing the notice of appeal, petition, or application shall be deemed to have appeared on behalf of the appellant, petitioner, or applicant, and the head of the respondent agency's litigation office shall be deemed to have appeared on behalf of the respondent. A notice of appearance in the form specified in the appendix to this part and Part 6102 is sufficient. Attorneys representing parties before the Board are required to list the state bars to which they are admitted and their state bar numbers or other bar identifiers.

(c) *Withdrawal of appearance.* Any person who has filed a notice of appearance and who wishes to withdraw from a case must file a motion which includes the name, address, telephone number, and facsimile machine number of the person who will assume responsibility for representation of the party in question. The motion shall state the grounds for withdrawal unless it is accompanied by a representation from the successor representative or existing co-counsel that the established case schedule will be met.

6101.7 Pleadings in appeals [Rule 107].

(a) *Pleadings required and permitted.* Except as the Board may otherwise order, the Board requires the submission of a complaint and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.

(b) *Complaint.* No later than 30 calendar days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant, if such document sufficiently states the factual basis and amount of the claim.

(c) *Answer.* No later than 30 calendar days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint, as well as any affirmative defenses it chooses to assert. A dispositive motion or a motion for a more definite statement may be filed in lieu of the answer only with the permission of the Board. If no answer is timely filed, the board may enter a

general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (f) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(d) *Reply to an answer.* If the Board orders or permits a reply to an answer, it shall be filed as directed by the Board.

(e) *Modifications to requirement for pleadings.* If the appellant has elected the small claims procedure provided by 6102.2 or the accelerated procedure provided by 6102.3, the submission of pleadings shall be governed by the applicable section.

(f) *Amendment of pleadings.* Each party to an appeal may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed; if the pleading is one to which no responsive pleading is permitted, such amendment may be made at any time within 20 calendar days after it is served or, in small claims proceedings under 6102.2, within 10 working days after it is served. The Board may permit the parties to amend pleadings further on conditions fair to both parties. If a response to the unamended pleading was required by the rules in this part or by an order of the Board, a response to the amended pleading shall be filed no later than 30 calendar days after the filing of the amended pleading or, in small claims proceedings, no later than 15 calendar days after the filing of the amended pleading. 6101.12(e) concerns amendments to pleadings to conform to the evidence.

6101.8 Motions [Rule 108].

(a) *How motions are made.* Motions may be oral or written. A written motion shall indicate the relief sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor. In addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this section. 6101.25 prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party.

(b) *When motions may be made.* A motion filed in lieu of an answer pursuant to 6101.7(c) shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by the Board. Any other dispositive motion shall be made as soon as practicable after the grounds therefor are known. Any other motion shall be made promptly or as required by this part.

(c) *Dispositive motions.* The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment); and

(4) Any other motion to dismiss.

(d) *Other motions.* Other motions may be made in good faith and in proper form.

(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide a case. When all facts touching upon the Board's jurisdiction are not to record, or in other appropriate circumstances, a decision on a jurisdictional question may be deferred pending a hearing on the merits or the filing of record submissions.

(f) *Procedure.* Unless otherwise directed by the Board, a party may respond to a written motion other than a motion pursuant to 6101.30, 6101.31, 6101.32, or 6101.33 at any time within 20 calendar days after the filing of the motion. Responses to motions pursuant to 6101.30, 6101.31, 6101.32, or 6101.33 may be made only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from any of the parties.

(g) *Motions for summary relief.* (1) A motion for summary relief should be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief in whole or in part as a matter of law. A motion for summary relief should be filed as soon as feasible, to allow the Board to rule on the motion in advance of a scheduled hearing date.

(2) With each motion for summary relief, there shall be served and filed a

separate document titled Statement of Uncontested Facts, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 appeal file exhibits relied upon to support such statement.

(3) An opposing party shall file with its opposition (or cross-motion) a separate document titled Statement of Genuine Issues. This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement and give its version of the facts. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the 6101.4 appeal file exhibits that demonstrate the existence of a genuine dispute. An opposing party may also file a Statement of Uncontested Facts as to any relevant matters not covered by the moving party's statement.

(4) When a motion for summary relief is made and supported as provided in this section, an opposing party may not rest upon the mere allegations or denials of its pleadings, but the opposing party's response, by affidavits or as otherwise provided by this section, must set forth specific facts showing that there is a genuine issue of material fact. If the opposing party does not so respond, summary relief, if appropriate, shall be entered against that party. For good cause shown, if an opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may made such other order as is just.

(h) *Effect of pending motion*. Except as this part and part 6102 provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the case in accordance with this part and part 6102 and the orders and directions of the Board.

6101.9 Election of hearing or record submission [Rule 109].

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.11. Such an election may be filed at any time unless a time for filing is prescribed by the Board. A party electing to submit its case on the record pursuant to 6101.11 may also elect to appear at a hearing solely to cross-examine any witness presented by the opposing party, provided that the Board is informed of that party's intention within 10 working days of its receipt of notice of the election of hearing by the other party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices. A hearing will be held if either party elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of the other party, it shall consult with the other party before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit its case on the record shall be due as provided in 6101.11.

6101.10 Conferences; conference memorandum; prehearing order; prehearing and presubmission briefs [Rule 110].

(a) *Conferences*. The Board may convene the parties in conference, either by telephone or in person, for any purpose. The conference may be stenographically or electronically recorded, at the discretion of the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understandings on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Ways to expedite disposition of the case or to facilitate settlement of the dispute, including, if the parties and the Board agree, the use of alternative dispute resolution techniques, as provided in 6102.1 and 6102.4.

(b) *Conference memorandum*. The Board may prepare a memorandum of the results of a conference or issue an order reflecting any actions taken, or both. A memorandum or order so issued shall be placed in the record of the case and sent to each party. Each party shall have 5 working days after receipt of a memorandum to object to the substance of it.

(c) *Prehearing order*. The Board may issue a prehearing or presubmission order to govern the proceedings in a case.

(d) *Prehearing or presubmission briefs*. A party may, by leave of the Board, file a prehearing or presubmission brief at any time before the hearing or upon or before the date on which first record submissions are due.

6101.11 Submission on the record without a hearing [Rule 111].

(a) *Submission on the record*. (1) A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(i) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(ii) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(iii) A brief or memorandum of law.

(2) The Board may require the submission of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) *Time for submission*. (1) If both parties have elected to submit the case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If one party has elected a hearing and the other party has elected to submit its case on the record, the party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs.

(c) *Objections to evidence*. Unless otherwise directed by the Board, objections to evidence (other than the appeal file and supplements thereto) in a record submission may be made within 10 working days after the filing of the submission. Replies to such objections, if any, may be made within 10 working days after the filing of the objection. The Board may rule on such objections in its opinion deciding the merits or otherwise disposing of the case.

6101.12 Record of Board proceedings [Rule 112].

(a) *Composition of the record for decision*. (1) The record upon which any decision of the Board will be rendered consists of:

(i) The notice of appeal, petition, or application;

(ii) Appeal file exhibits other than those as to which objection has been sustained;

(iii) Hearing exhibits other than those as to which an objection has been sustained;

(iv) Pleadings;

(v) Motions and responses thereto;

(vi) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(vii) Documents and other tangible things admitted in evidence by the Board;

(viii) Written transcripts or electronic recordings of proceedings;

(ix) Stipulations and admissions by the parties;

(x) Depositions, or parts thereof, received in evidence;

(xi) Written interrogatories and responses received in evidence;

(xii) Briefs and memoranda of law; and

(xiii) Anything else that the Board may designate.

(2) All other papers and documents in a case are part of the administrative

record of the proceedings. The administrative record shall include file and hearing exhibits offered but not received in evidence in a case; it may also include correspondence with and between the parties, and depositions, interrogatories, offers of proof contained in the transcript, and other documents that are not part of the record for decision.

(b) *Time for entry into the record.* Except as the Board may otherwise order, nothing other than posthearing briefs will be received into the record after a hearing is completed. In cases submitted on the record without a hearing, nothing will be received into the record after the time for filing of the last record submission. Briefs will be due as provided in 6101.25(b).

(c) *Closing of the record.* Except as the Board may otherwise order, no proof shall be received in evidence after a hearing is completed or, in cases submitted on the record without a hearing, after notice by the Board to the parties that the record is closed and that the case is ready for decision.

(d) *Notice that the case is ready for decision.* The Board will give written notice to the parties when the record is closed and the case is ready for decision.

(e) *Amendments to conform to the evidence.* When issues within the proper scope of a case, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing (see 6101.21(h)) or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may formally amend the pleadings to conform to the proof or may order that the record be deemed to contain pleadings so amended.

(f) *Enlargement of the record.* The Board may at any time require or permit enlargement of the record with additional evidence and briefs. It may reopen the record to receive additional evidence and oral argument at a hearing.

(g) *Inspection of the record of proceedings; release of any paper, document, or tangible thing prohibited.* Except for any part thereof that is subject to a protective order or deemed an *in camera* submission, the record of proceedings in a case shall be made available for inspection by any person. Such record shall be made available at the Office of the Clerk of the Board during the Board's normal working hours, as soon as practicable given the demands on the Board of processing the subject case and other cases. Except as provided in 6101.23(c) and 6101.37(d), no paper, document, or tangible thing which is part of the record of proceedings in a case may be released from the offices of the Board. Copies may be obtained by any person as provided in 6101.38(d). If such inspection or copying involves more than minimal costs to the Board, reimbursement will be required.

(h) *Protected and in camera submissions.* (1) A party may by motion request that the Board receive and hold materials under conditions that would limit access to them on the ground that such documents are privileged or confidential, or sensitive in some other way. The moving party must state the grounds for such limited access. The board may also determine on its own initiative to hold materials under such conditions. The manner in which such materials will be held, the persons who shall have access to them, and the conditions (if any) under which such access will be allowed will be specified in an order of the Board. If the materials are held under such an order, they will be part of the record of the case. If the Board denies the motion, the materials may be returned to the party that submitted them. If the moving party asks, however, that the materials be placed in the administrative record, *in camera,* for the purpose of possible later review of the Board's denial, the Board will comply with the request.

(2) A party may also ask, or the Board may direct, that testimony be received under protective order or *in camera.* The procedures under paragraph (h)(1) of this section shall be followed with respect to such request or direction.

6101.13—6101.14 [Reserved]

6101.15 General provisions governing discovery [Rule 115].

(a) *Discovery methods.* The parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Requests for production of documents or other tangible things; and

(4) Requests for admission.

(b) *Scope of discovery.* Except as otherwise limited by order of the Board in accordance with this part and part 6102, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Discovery limits.* The Board may limit the frequency or extent of use of the discovery methods set forth in this section if it determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) *Conduct of discovery.* Parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the case.

(e) *Discovery conference.* Upon request of a party or on its own initiative, the Board may at any time hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.10.

(f) *Discovery objections.* (1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(iii) That the discovery be conducted with no one present except persons designated by the Board; and

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way.

(2) Unless otherwise ordered by the Board, any objection to a discovery request must be filed within 15 calendar days after receipt. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests informally.

(3) A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(g) *Failure to make or cooperate in discovery; sanctions.* If a party fails

(i) To appear for a deposition, after being served with a proper notice;

(ii) To serve answers or objections to interrogatories submitted under 6101.17, after proper service of interrogatories; or

(iii) To serve a written response to a request for inspection, production, and copying of any documents and things under 6101.17, the party seeking discovery may move the Board to impose appropriate sanctions under 6101.18.

(h) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provision of 6101.20.

6101.16 Depositions [Rule 116].

(a) *When depositions may be taken.* Upon request of a party, the Board may order the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. Attendance of witnesses may be compelled by subpoena as provided in 6101.20, and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to ensure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may, nevertheless, arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership or association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead;

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment;

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon request and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* (1) If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action were pending before the Board. The motion shall show:

(i) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(ii) The reasons for perpetuating the testimony of the persons named.

(2) If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in 6101.15 and in this section. Thereupon, the depositions may be taken and used as prescribed in this part for depositions taken in actions pending before the Board. Upon request and for good cause shown, a judge may issue or obtain a subpoena, in accordance with 6101.20, for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

6101.17 Interrogatories to parties; requests for admission; requests for production of documents [Rule 117].

Upon order from the Board permitting such discovery, a party may serve on another party written interrogatories, requests for admission, and requests for production of documents.

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath or accompanied by a declaration under penalty of perjury, and answered within 30 calender days after service. Objections shall be filed within the time limits set forth in 6101.15(f)(2). An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a conference has been held, or some other event has occurred.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served, or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admission.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.15(f)(2). Otherwise, the matter therein may be deemed to be admitted. Any matter admitted is conclusively established for the purpose of the pending action, unless the Board on motion permits withdrawal or amendment of the admission. Any admission made by a party under this paragraph is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(d) *Written requests for production of documents.* A written request for the production, inspection, and copying of any documents and things shall be answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.15(f)(2).

(e) *Change in time for response.* Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in this section.

(f) *Responses.* A party that has responded to written interrogatories, requests for admission, or requests for production of documents, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional information and such additional documents

as are necessary to give a complete and accurate response to the request.

6101.18 Sanctions and other proceedings [Rule 118].

(a) *Standards.* All parties and their representatives, attorneys, and any expert/consultant retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which an attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, and its proceedings. The Board will also look to voluntary professional guidelines in evaluating an individual's conduct.

(b) *Sanctions.* When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the contention of the party submitting the discovery request;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing the case or any part thereof;

(7) Enforcing the protective order and disciplining individuals subject to such other violation thereof, including disqualifying a party's representative, attorney, or expert/consultant from further participation in the case; or

(8) Imposing such other sanctions as the Board deems appropriate.

(c) *Denial of access to protected material for prior violations of protective orders.* The Board may in its discretion deny access to protected material to any person found to have previously violated the Board's protective order.

(d) *Disciplinary proceedings.* (1) In addition to the other procedures in this section, the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board's process or proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

(2) The Board in its discretion may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such individual notice and an opportunity to be heard, a majority of the members of the full Board determines such a sanction is warranted.

6101.19 Hearings: scheduling; notice; unexcused absences [Rule 119].

(a) *Scheduling of hearings.* Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of this part and part 6102, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed pursuant to 6101.9 or otherwise. The time or place for hearing may be changed by the Board at any time.

(b) *Notice of hearing.* Notice of hearing will be by written order of the Board. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing shall, within 10 working days of receipt of:

(1) A written notice of hearing or

(2) Any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing.

(c) *Unexcused absence from hearing.* In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to 6101.11.

6101.20 Subpoenas [Rule 120].

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of evidence by third parties, and when practicable, without issuance of a subpoena.

(b) *General.* Upon the written request of any party filed with the Office of the Clerk of the Board, or on the initiative of a judge, a subpoena may be issued that commands the person to whom it is directed to:

(1) Attend and give testimony at a deposition in a city or county where that person resides or is employed or transacts business in person, or at another location convenient to that person that is specifically determined by the Board;

(2) Attend and give testimony at a hearing; and

(3) Produce the books, papers, documents, and other tangible things designated in the subpoena.

(c) *Request for subpoena.* A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any documentary evidence sought. A request for a subpoena shall be filed at least 15 calendar days before the testimony of a witness or documentary evidence is to be provided. The Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(d) *Form; issuance.* Every subpoena shall be in the form specified in the appendix to this part and part 6102. Unless a party has the approval of a judge to submit a subpoena in blank (in whole or in part), a party shall submit to the judge a completed subpoena (save the ''Return on Service'' portion). In issuing a subpoena to a requesting party, the judge shall sign the subpoena. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) If the person subpoenaed is located in a foreign country, a letter rotatory or a subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(e) *Service.* (1) The party requesting a subpoena shall arrange for service. Service shall be made as soon as practicable after the subpoena has been issued.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personal delivery of a copy to that person and tender of the fees for one day's attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(f) *Proof of service.* The person serving the subpoena shall make proof of service thereof to the Board promptly and in any event before the date on which the person served must respond to the subpoena. Proof of service shall be made by completion and execution and submission to the Board of the ''Return on Service'' portion of a duplicate copy of the subpoena issued by a judge. If service is made by a person other than a United States marshal or his deputy, that person shall make an affidavit as proof by executing the ''Return on Service'' in the presence of a notary.

(g) *Motion to quash or to modify.* Upon written motion by the person subpoenaed or by a party, made within 14 calendar days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) Require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed documentary evidence. Where circumstances require, the Board may act upon such a motion at any time after a copy has been served upon opposing parties.

(h) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board shall apply to the court through the Attorney General of the United States for an order requiring the person to appear before the board to give testimony, produce evidence or both. If a person fails to obey such an order, the court may punish that person for contempt of court.

6101.21 Hearing procedures [Rule 121].

(a) *Nature and conduct of hearings.* Except when necessary to maintain the confidentiality of protected material or testimony, or material submitted *in camera,* all hearings on the merits of cases shall be open to the public and conducted insofar as is convenient in regular hearing rooms. All other acts or proceedings may be done or conducted by the Board either in its offices or at other places.

(b) *Continuances; change of location.* Whenever practicable, a hearing will be conducted in one continuous session or a series of consecutive sessions at a single location. However, the Board may at any time continue the hearing to a future date and may arrange to conduct the hearing in more than one location. The Board may also continue a hearing to permit a party to conduct additional discovery on conditions established by the Board. In exercising its discretion to continue a hearing or to change its location, the Board will give due consideration to the same elements (set forth in 6101.19(a)) that it considers in scheduling hearings.

(c) *Availability of witnesses, documents, and other tangible things.* It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whoever it wishes to call and whatever it wishes to use is available at the hearing.

(d) *Enlargement of the record.* The Board may at any time during the conduct of a hearing require evidence or argument in addition to that put forth by the parties.

(e) *Examination of witnesses.* Witnesses before the Board will testify under oath or affirmation. A party or the Board may obtain an answer from any witness to any question that is not the subject of an objection that the Board sustains.

(f) *Refusal to be sworn.* If a person called as a witness refuses to be sworn or to affirm before testifying, the Board may direct that witness to do so and, in the event of continued refusal, the Board may permit the taking of testimony without oath or affirmation. Alternatively, the Board may refuse to permit the examination of that witness, in which event it may state for the record the inferences it draws from the witness's refusal to testify under oath or affirmation. Alternatively, the Board may issue a subpoena to compel that witness to testify under oath or affirmation, and in the event of the witness's continued refusal to swear or affirm, may seek enforcement of that subpoena pursuant to 6101.20(h).

(g) *Refusal to answer.* If a witness refuses to answer a question put to him in the course of his testimony, the Board may direct that witness to answer and, in the event of continued refusal, the Board may state for the record the inferences if draws from the refusal to answer. Alternatively, the Board may issue a subpoena to compel that witness to testify and, in the event of the witness's continued refusal to testify, may seek enforcement of that subpoena pursuant to 6101.20(h).

(h) *Issues not raised by pleadings.* If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board if it is within the proper scope of the case. If such evidence is admitted, the Board may grant the objecting party a continuance to enable it to meet such evidence. If such evidence is admitted,

the pleadings may be amended to conform to the evidence, as provided by 6101.12(e).

(i) *Delay by parties.* If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, by written order or by ruling from the bench, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

6101.22 Admissibility and weight of evidence [Rule 122].

(a) *Admissibility.* Any relevant evidence may be received. The Board may exclude relevant evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliable or untrustworthy.

(b) *Federal Rules of Evidence.* As a general matter, and subject to the other provisions of this section, the Board will base its evidentiary rulings on the Federal Rules of Evidence.

(c) *Weight and credibility.* The Board will determine the weight to be given to evidence and the credibility to be accorded witnesses.

(d) *Submission of evidence in camera.* 6101.12(h) governs submissions *in camera.*

6101.23 Exhibits [Rule 123].

(a) *Marking of exhibits.* (1) Documents and other tangible things offered in evidence by a party will be marked for identification by the Board during the hearing or, if it is convenient for the Board and the parties, before the commencement of the hearing. They will be numbered consecutively as the exhibits of the party offering them.

(2) If a party elects to proceed on the record without a hearing pursuant to 6101.11, documentary evidence submitted by that party will be numbered consecutively by the Board as appeal file exhibits.

(b) *Copies as exhibits.* Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were the originals. If the Board so directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received into evidence as an exhibit, an accurate copy thereof may be substituted in evidence for the original by leave of the Board at any time.

(c) *Withdrawal of documentary exhibits and other papers.* With the permission of the Board, a party may remove an exhibit during the course of a proceeding. Otherwise, except as provided in 6101.37(d), no withdrawal of any papers in the Board's file is permitted. Inspection of the file at the Board's offices is permitted by 6101.12(g).

(d) *Disposition of physical exhibits.* Any physical (as opposed to documentary) exhibit may be disposed of by the Board at any time more than 90 calendar days after the expiration of the period for appeal from the decision of the Board, unless it has been earlier withdrawn by the party that submitted it.

6101.24 Transcripts of proceedings; corrections [Rule 124].

(a) *Transcripts* Except as the Board may otherwise order, all hearings, other than those under the small claims procedure prescribed by 6102.2, will be stenographically or electronically recorded and transcribed. Any other hearing or conference will be recorded or transcribed only by order of the Board. Copies or transcriptions of stenographic or electronic recordings not ordered to be transcribed by the Board will be furnished to the parties or other persons only on conditions prescribed by the Board, which may include the payment of the costs of copying or transcription. Each party is responsible for obtaining its own copy of the transcript if one is prepared.

(b) *Corrections.* Corrections to an official transcript will be made only when

they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative, and only after notice to the parties giving them opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, but when no other method of correction is practicable the Board may require the reporter to provide substitute or additional pages.

6101.25 Briefs and memoranda of law [Rule 125].

(a) *Form and content of briefs and memoranda of law.* Briefs and memoranda of law shall be typewritten on standard size 8½ by 11–inch paper. Otherwise, no particular form or organization is prescribed. Posthearing briefs should, at a minimum, succinctly set forth

(1) The facts of the case with citations to those places in the record where supporting evidence can be found and

(2) Argument with citations to supporting legal authorities. Memoranda of law should generally adhere as closely as practicable to the form and content of briefs.

(b) *Submission of posthearing briefs.* Except as the Board may otherwise order, posthearing briefs shall be filed 30 calendar days after the Board's receipt of the transcript; reply briefs, if filed, shall be filed 15 calendar days after the parties' receipt of the initial posthearing briefs. The Board will notify the parties of the date of its receipt of the transcript. In the event one party has elected a hearing and the other party has elected to submit its case on the record pursuant to 6101.11, the filing of record submissions in the form of briefs shall be governed by this section.

6101.26 Consolidation; separate hearings; separate determination of liability [Rule 126].

(a) *Consolidation.* When cases involving common questions of law or fact are pending, the Board may:

(1) Order a joint hearing of any or all of the matters at issue in the cases;

(2) Order the cases consolidated; or

(3) Make such other orders concerning the proceedings therein as are intended to avoid unnecessary costs or delay.

(b) *Separate hearings.* The Board may order a separate hearing of any case or cases or of any claims or issues or number of claims or issues therein. The Board may enter appropriate orders or decisions with respect to any claims or issues that are heard separately.

(c) *Separate determinations of liability.* The Board may:

(1) Limit a hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for other proceedings; and

(2) In its decision of an appeal, irrespective of whether there is evidence in the record concerning the amount of recovery, and whether or not a stipulation or order has been made, reserve determination of the amount of recovery for other proceedings. In any instance in which the Board has reserved its determination of the amount of recovery for other proceedings, its decision on the question of the right to recover shall be final, subject to the provisions of 6101.30 through 6101.33.

6101.27 Stay or suspension of proceedings; dismissals in lieu of stay or suspension [Rule 127].

(a) *Stay of proceedings to obtain contracting officer's decision.* The Board may in its discretion stay proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) *Suspension for other cause.* The Board may suspend proceedings in a case for good cause. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) *Dismissal in lieu of stay or suspension.* When circumstances beyond the control of the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the

case without prejudice to reinstatement. Such a dismissal may require reinstatement by a date certain or within a certain period of time after the occurrence of a specified event. If the order of dismissal does not otherwise provide, it will be subject to the provisions of 6101.28(b).

6101.28 Dismissals [Rule 128].

(a) *Generally*. A case may be dismissed by the Board on motion of either party. A case may also be dismissed for reasons cited by the Board in a show cause order to which response has been permitted. Every dismissal shall be with prejudice to reinstatement of the case unless a dismissal without prejudice has been requested by a party or specified in a show cause order.

(b) *Dismissal without prejudice*. When a case has been dismissed without prejudice to its reinstatement and neither party has requested, within the period of time specified in this paragraph, that the case be reinstated, the case shall be deemed to have been dismissed with prejudice as of the expiration of 180 calendar days from the date of dismissal, or such other period as the Board may prescribe.

(c) *Issuance of order*. An order of dismissal shall be issued by the panel of judges to which the case has been assigned if the motion is contested or if the Board is acting consequent to its own show cause order. An order of dismissal may be issued by the panel chairman alone if the motion to dismiss is not contested.

6101.29 Decisions: format; procedure [Rule 129].

Except as provided in 6102.2 (small claims procedure), decisions of the Board will be made in writing upon the record as prescribed in 6101.12. Each of the parties will be furnished a copy of the decision certified by the Office of the Clerk of the Board, and the date of the receipt thereof by each party will be established in the record.

6101.30 Full Board consideration [Rule 130].

(a) *Requests*. (1) A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when

(i) It is necessary to secure or maintain uniformity of Board decisions, or

(ii) The matter to be referred is one of exceptional importance.

(2) A request for full Board consideration may be made by either party on any date which is both

(i) After the panel to which the case is assigned has issued its decision on a motion for reconsideration or relief from decision and

(ii) Within 10 working days after the date on which that party receives that decision. Any party making a request for full Board consideration shall state concisely in the motion the precise grounds on which the request is based.

(3) The full Board on its own may initiate consideration of a matter

(i) At any time while the case is before the Board,

(ii) No later than the last date on which any party may file a motion for reconsideration or relief from decision or order, or

(iii) If such a motion is filed by a party, within ten days after a panel has resolved it.

(b) *Consideration*. Promptly after such a request is made, a ballot will be taken among the judges; if a majority of them favors the request, the request will be granted. The result of the vote will promptly be reported by the Board through an order. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(c) *Decisions*. If full Board consideration is granted, a vote shall be taken promptly on the pending matter. After this vote is taken, the Board shall promptly, by order, issue its determination, which shall include the concurring or dissenting view of any judge who wishes to express such a view.

6101.31 Clerical mistakes [Rule 131].

Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the

Board may prescribe. During the pendency of an appeal to another tribunal, such mistakes may be corrected only with leave of the appellate tribunal.

6101.32 Reconsideration; amendment of decisions; new hearings [Rule 132].

(a) *Grounds.* Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in 6101.33(a) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. Reconsideration, or a new hearing, may be granted on all or any of the issues. Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration. On granting a motion for a new hearing, the Board may open the decision if one has been issued, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.

(b) *Procedure.* (1) Any motion under this section shall comply with the provisions of 6101.8 and shall set forth:

(i) The reason or reasons why the Board should consider the motion; and

(ii) The relief sought and the grounds therefor.

(2) If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* A motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed in an appeal or petition within 30 calendar days and in an application within 7 working days after the date of receipt by the moving party of the decision or order. Not later than 30 calendar days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

(d) *Effect of motion.* A motion pending under this section does not affect the finality of a decision or suspend its operation.

6101.33 Relief from decision or order [Rule 133].

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under this section shall comply with the provisions of 6101.8 and 6101.32(b), and will be considered and ruled upon by the Board as provided in 6101.32.

(c) *Time for filing.* Any motion under this section shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 calendar days or, in appeals under the small claims procedure of 6102.2, no later than 30 calendar days after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under this section, the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion pending under this section does not affect the finality of a decision or suspend its operation.

6101.34 Harmless error [Rule 134].

No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything

done or omitted to be done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

6101.35 Award of costs [Rule 135].

(a) *Applications for costs.* An appropriate party in a proceeding before the Board may apply for an award of costs, including if applicable an award of attorney fees, under the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. For purposes of this section, ''decision'' includes orders of dismissal resulting from settlement agreements that bring to an end the proceedings before the Board.

(b) *Time for filing.* A party seeking an award may submit an application no later than 30 calendar days after a final disposition in the underlying appeal. In the case of an appeal that is adjudicated, the Board's decision becomes final (for purposes of this section) when it is not appealed to the United States Court of Appeals for the Federal Circuit within the time permitted for appeal or, if the decision is appealed, when the time for petitioning the Supreme Court for certiorari has expired. In the case of an appeal that is resolved as a result of settlement, the Board's disposition becomes final (for purposes of this section) after receipt by the applicant of the order granting or dismissing the appeal.

(c) *Application requirements.* An application for costs shall:

(1) Identify the applicant and the appeal for which costs are sought, and the amount being sought;

(2) Establish that all applicable prerequisites for an award have been satisfied, including a succinct statement of why the applicant is eligible for an award of costs;

(3) Be accompanied by an exhibit fully documenting any fees or expenses being sought, including the cost of any study, analysis, engineering report, test, project, or similar matter. The date and a description of all services rendered or costs incurred shall be submitted for each profession firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the particular services performed by specific date, the rate at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant on account of the sought-after costs. Except in exceptional circumstances, all exhibits supporting applications for fees or expenses sought shall be publicly available. The Board may require the applicant to provide vouchers, receipts, or other substantiation for any costs claimed and/or to submit to an audit by the Government of the claimed costs;

(4) Be signed by the applicant or an authorized officer, employee, or attorney of the applicant;

(5) Contain or be accompanied by a written verification under oath or affirmation, or declaration under penalty of perjury, that the information provided in the application is true and correct;

(6) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof; and

(7) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) *Proceedings.* (1) Within 30 calendar days after receipt by the respondent of an application under this section, the respondent may file an answer. The answer shall explain in detail any objects to the award requested and set out the legal and factual bases supporting the respondent's position. If the respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency, the respondent shall include in the answer evidence of such highest rate.

(2) Further proceedings shall be held only by order of the Board and only when necessary for full and fair resolution of the issues arising from the application. Such proceedings shall be minimized to the extent possible and shall not include relitigation of the case on the merits. A request that the Board order further proceedings under this section shall describe the disputed issues and explain why additional proceedings are necessary to resolve those issues.

(e) *Decision*. Any award ordered by the Board shall be paid pursuant to 6101.36.

6101.36 Payment of Board awards [Rule 136].

(a) *Generally*. When permitted by law, payment of Board awards may be made in accordance with 31 U.S.C. 1304. Awards by the Board pursuant to the Equal Access to Justice Act shall be directly payable by the respondent agency over which the applicant has prevailed in the underlying appeal.

(b) *Conditions for payment*. Before a party may obtain payment of a Board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) Both parties must, by execution of a Certificate of Finality, waive their rights to relief under 6101.32 and 6101.33 and also their rights to appeal the decision of the Board; or

(2) The time for filing an appeal must expire.

(c) *Procedure for filing of certificates of finality*. Whenever the Board issues a decision or an order awarding a party any amount of money, it will attach to the copy of the decision sent to each party forms such as those illustrated in the appendix to this part and part 6102. The conditions for payment prescribed in paragraph (b)(1) of this section are satisfied if each of the parties returns a completed and duly executed copy of this form to the Board. When the form is executed on behalf of an appellant or applicant by an attorney or other representative, proof of signatory authority shall also be furnished. Upon receipt of completed and duly executed Certificates of Finality from the parties, the Board will forward a copy of each such certificate (together with proof of signatory authority, if required) and a certified copy of its decision to the United States Department of the Treasury to be certified for payment.

(d) *Procedure in absence of certificate of finality*. When one or both of the parties fails to submit a duly executed Certificate of Finality, but the conditions for payment have been satisfied as provided in paragraph (b)(2) of this section, the appellant or applicant may file a written request that the Board forward its decision to the United States Department of the Treasury for payment. Thereupon, the Board will forward a copy of that request and a certified copy of its decision to the United States Department of the Treasury to be certified for payment.

(e) *Stipulated award*. When an appeal is settled, the parties may file with the Board a stipulation setting forth the amount of the award and stating

(1) That they will not seek reconsideration of, or relief from, the Board's decision, and

(2) That they will not appeal the decision. The Board will adopt the parties' stipulation by decision. The Board's decision under this paragraph is an adjudication of the case on the merits.

6101.37 Record on review of a Board decision [Rule 137].

(a) *Record on review*. When a party has appealed a Board decision to the United States Court of Appeals for the Federal Circuit, the record on review shall consist of the decision sought to be reviewed, the record before the Board as described in 6101.12, and such other material as may be required by the Court of Appeals.

(b) *Notice*. At the same time a party seeking review of a Board decision files a notice of appeal, that party shall provide a copy of the notice to the Board.

(c) *Filing of certified list of record materials*. Promptly after service upon the Board of a copy of the notice of appeal of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the United States Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties

may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the Court upon the Court's order during the pendency of the appeal.

(d) *Request by attorney of record to review record.* When a case is on appeal, an attorney of record may request permission from the Board to sign out the record on appeal to review and copy, for a reasonable period of time, if the attorney is unable to gain access to the record from another source.

6101.38 Office of the Clerk of the Board [Rule 138].

(a) *Open for the filing of papers.* The Office of the Clerk of the Board shall receive all papers submitted for filing, and shall be open for this purpose from 8:00 a.m. to 4:30 p.m., Eastern Time, on each day that is not a Saturday, Sunday, federal holiday, a day on which the Office is required to close earlier than 4:30 p.m., or a day on which the Office does not open at all, as in the case of inclement weather.

(b) *Decisions and orders.* The Office of the Clerk shall keep in such form and manner as the Board may prescribe a correct copy of each decision or order of the Board subject to review and any other order or decision which the Board may direct to be kept.

(c) *Docket.* The Office of the Clerk shall keep a docket on which shall be entered the title and nature of all cases brought before the Board, the names of the persons filing such cases, the names of the attorneys or other persons appearing for the parties, and a record of all proceedings.

(d) *Copies and certification of papers.* Upon the request of any person, copies of papers and documents in a case may be provided by the Office of the Clerk. If making such copies involves more than minimal costs to the Board, reimbursement will be required. When required, the Office of the Clerk will certify copies of papers and documents as a true record of the Board. Except as provided in 6101.23(c) and 6101.37(d), the Office of the Clerk will not release original records in its possession to any person.

6101.39 Seal of the Board [Rule 139].

The Seal of the Board shall be a circular boss, the center portion of which shall depict the Seal of the General Services Administration. The outer margin of the seal shall bear the legend ''Board of Contract Appeals.'' The Seal shall be the means of authentication of all records, notices, orders, dismissals, opinions, subpoenas, and certificates issued by the Board.

6101.40 Forms [Rule 140].

The forms contained in the appendix to this part and part 6102 are sufficient under these parts and are intended to indicate the simplicity and brevity of statement which the rules in those parts contemplate. The subpoena form is a required form, and it may not be altered.

APPENDIX TO PART 6101—FORM NOS. 1–5

Form 1—Notice of Appeal, GSA Form 2465
Form 2—Notice of Appearance
Form 3—Subpoena, GSA Form 9534
Form 4—Government Certificate of Finality
Form 5—Appellant/Applicant Certificate of Finality

NOTICE OF APPEAL	DATE	OMB APPROVAL NO. 3090-0221

TO: Board of Contract Appeals
General Services Administration
Washington, DC 20405

I/We hereby appeal the final decision of _____ (Name of Contracting Officer), issued _____ (Date),

in connection with a dispute under Contract No. _____. This contract was awarded _____ (Date)

for _____ (Type of commodity, service, or construction)

by _____ (Name of agency and organizational unit), _____ (City and State)

1. DESCRIBE THE NATURE OF THE DISPUTE INVOLVED IN THE FINAL DECISION AND ANY OTHER CIRCUMSTANCES GIVING RISE TO THIS APPEAL:

2. DESCRIBE THE RELIEF WHICH YOU SEEK INCLUDING AN ESTIMATE OF THE AMOUNT OF MONEY IN CONTROVERSY, IF ANY, AND IF KNOWN:

APPELLANT			ATTORNEY FOR APPELLANT		
NAME			NAME		
TITLE			FIRM		
STREET			STREET		
CITY			CITY		
STATE	ZIP CODE	TELEPHONE NUMBER ( )	STATE	ZIP CODE	TELEPHONE NUMBER ( )
APPELLANT'S SIGNATURE			ATTORNEY'S SIGNATURE		

GENERAL SERVICES ADMINISTRATION GSA FORM 2465 (REV. 6-85)

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

Form 2

_____ :
_____ : GSBCA _____
_____ :
:
Contract/Solicitation No. :
_____ :

NOTICE OF APPEARANCE

To: _____
Board Judge
Board of Contract Appeals

Please enter my appearance as counsel for / representative of

_____ in the above captioned case.

_____ _____
(Name) Date

_____ _____
(Title) (Phone)

_____ _____
(Address) (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance was mailed postage paid/delivered

this _____ day of _____, 19___, to _____.

_____
Signature

Note: This format shall not be printed, reproduced, or stocked by the Central Office or regional offices and shall be used only as a guide for individual preparation.

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

SUBPOENA

OMB APPROVAL NO.
3090-0221

_____ GSBCA_____

_____

_____

Contract/Solicitation No.

_____

TO:_____

_____

_____

YOU ARE HEREBY COMMANDED to appear at _____ (Room Number) _____ (Building)

_____ (Street Number) _____ (City) _____ (State)

at _____o'clock _____.m., on the _____ day of _____, 19____,

to testify at a (deposition/hearing) in this case; and to bring with you [1] _____

_____

_____

_____

and to stay there until given permission to leave. This subpoena is issued at the request of (Appellant/Petitioner/Applicant/Respondent).

Your appearance as ordered by this subpoena will entitle you to receive the fees and mileage provided by 28 U.S.C. § 1821 or other applicable law.

_____

[1] Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.

GENERAL SERVICES ADMINISTRATION **GSA** FORM 9534 (Rev. 11-93)
Prescribed by BCA 2806.1

Upon written request to this Board by you or by a party to this case, which request should be made within 10 days after service but in any event no later than the time specified in the subpoena for attendance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things.

(Board Judge)	(Date)
(Representative for Appellant/Petitioner/Applicant)	(Representative for Respondent)
(Address)	(Address)
(Telephone Number)	(Telephone Number)
(Date)	(Date)

RETURN ON SERVICE

Summoned the above-named witness by delivering a copy to h___ and tendering to h___ the fees for one days attendance and mileage allowed by law, on the _____ day of _____, 19_____, at _____.

Subscribed and sworn to before me, a _____ this _____ day of _____, 19_____.

_____

NOTE: Affidavit not required if service is made by U.S. Marshall or Deputy. Service may also be made by any other person who is not a party and is not less than 18 years of age. Service shall be made by personally delivering a copy to the person named and tendering the fees for one day's attendance and the mileage allowed by law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

GSA FORM 9534 BACK (REV. 11-93)

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

Form 4

_____ :
_____ : GSBCA _____
_____ :
:
Contract/Solicitation No. :
_____ :

GOVERNMENT CERTIFICATE OF FINALITY

A. Date claim(s) filed with the contracting officer:

B. Amount to be paid: $ _____.

C. Agency address (regional office if other than central office):

D. Agency Certification

_____ hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit.

Government Agency

_____ By _____
Date Signature and Title

Note: This format shall not be printed, reproduced, or stocked by the Central office or regional offices and shall be used only as a guide for individual preparation.

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

Form 5

_____	:	
_____	:	GSBCA _____
_____	:	
	:	
Contract/Solicitation No.	:	
_____	:	

APPELLANT/APPLICANT CERTIFICATE OF FINALITY

A. Address to which check should be sent (if check is to be sent to counsel, enclose a power of attorney):

B. Appellant/Applicant Certification

_____hereby certifies that:

(1) it has not initiated and will not initiate any proceeding at the Board for the reconsideration of, or relief from, this award;

(2) it has not initiated and will not initiate any appeal of this award to the United States Court of Appeals for the Federal Circuit; and

(3) it agrees to accept the amount awarded, plus any interest awarded, in accordance with the Board's decision in this case, in full and final satisfaction of its case.

Appellant/Applicant

_____ **By** _____
Date **Signature and Title**

Note: This format shall not be printed, reproduced, or stocked by the Central office or regional offices and shall be used only as a guide for individual preparation.

PART 6102—RULES OF PROCEDURE OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS (EXPEDITED PROCEEDINGS)

Sec.
6102.1 Variation from standard proceedings [Rule 201].
6102.2 Small claims procedure [Rule 202].
6102.3 Accelerated procedure [Rule 203].
6102.4 Alternative dispute resolution [Rule 204].

AUTHORITY: 41 U.S.C. 601–613.

SOURCE: 61 FR 52369, Oct. 7, 1996, unless otherwise noted.

6102.1 Variation from standard proceedings [Rule 201].

The ultimate purpose of any Board proceeding is to resolve fairly and expeditiously any dispute properly before the Board. When, during the normal course of a Board proceeding, the parties agree that a change in established procedure will promote this end, the Board will make that change if it is deemed to be feasible and in the best interest of the parties, the Board, and the resolution of contract disputes. The following are examples of these changes:

(a) Establishing an expedited schedule of proceedings, such as by limiting the times provided in part 6101 of this chapter for various filings, to facilitate a prompt resolution of the case;

(b) Developing a record and rendering a decision on the issue of entitlement prior to reviewing the issue of quantum in a party's claim;

(c) Developing a record and rendering a decision on any legal or factual issue in advance of others when that issue is deemed critical to resolving the case or effecting a settlement of any items in dispute; and

(d) Developing a record regarding relevant facts through an on-the-record round-table discussion with sworn witnesses, counsel, and the panel chairman rather than through formal direct and cross-examination of each of these same witnesses. This discussion shall be controlled by the panel chairman. It may be conducted, for example, through the presentation of narrative statements of witnesses or on an issue by issue basis. The panel chairman may also request that the parties' counsel or representatives present opening and/or closing statements in lieu of written briefs.

6102.2 Small claims procedure [Rule 202].

(a) *Election.*—(1) The small claims procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $50,000 or less. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the panel chairman enlarges the time for good cause shown.

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $50,000, such that the election is inappropriate. The Government shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision.* The panel chairman may issue a decision, which may be in summary form, orally or in writing. A decision which is issued orally shall be reduced to writing; however, such a decision takes effect at the time it is rendered, prior to being reduced to writing. A decision shall be final and conclusive and shall not be set aside except in case of fraud. A decision shall have no value as precedent.

(c) *Procedure.* Promptly after receipt of the appellant's election of the small claims procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated.

(d) *Time of decision.* Whenever possible, the panel chairman shall resolve an appeal under this procedure within 120 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inference adverse to the party at fault.

6102.3 Accelerated procedure [Rule 203].

(a) *Election*. (1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $100,000 or less. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the panel chairman enlarges the time for good cause shown.

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $100,000, such that the election is inappropriate. The Government shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) *Decision*. Each decision shall be rendered by the panel chairman with the concurrence of one of the other judges assigned to the panel; in the event the two judges disagree, the third judge assigned to the panel will participate in the decision.

(c) *Procedure*. Promptly after receipt of the appellant's election of the accelerated procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings may be simplified, and discovery and other prehearing activities may be restricted or eliminated.

(d) *Time of decision*. Whenever possible, the panel chairman shall resolve an appeal under this procedure within 180 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

6102.4 Alternative dispute resolution [Rule 204].

(a) *Availability of ADR procedures*. The Board will make its services available for ADR proceedings in contract and procurement matters involving any agency, regardless of whether the agency uses the Board to resolve its Contract Disputes Act appeals.

(1) *ADR subsequent to docketing of case at the Board*. Parties are encouraged to consider the feasibility of using ADR as soon as their case is docketed. If, however, at any time during the course of a Board proceeding, the parties agree that their dispute may be resolved through the use of an ADR technique, the panel chairman may suspend proceedings for a reasonable period of time while the parties and the Board attempt to resolve the dispute in this manner. The use of an ADR technique will not toll any relevant statutory time limit for deciding the case.

(2) *Other ADR*. Upon request, the Board will make a Board Neutral available for an ADR proceeding involving any agency in any contract or procurement matter at any stage of a procurement, even if no contracting officer decision has been issued or is contemplated. To initiate an ADR proceeding, the parties shall jointly request the ADR in writing and direct such request to the Office of the Clerk of the Board. For agencies other than GSA, the Board will provide ADR services on a reimbursable basis.

(b) *Conduct of ADR*—(1) *Selection of Board Neutral*. If ADR is agreed to by the parties and the Board, the parties may request the appointment of one or more Board judges to act as a Board Neutral or Neutrals. The parties may request that the Board's chairman appoint a particular judge or judges as the Board Neutral, or ask the Board's chairman to appoint any judge or judges as the Neutral. If, when ADR has been requested for a case that has already been docketed with the Board, as provided in paragraph (a)(1) of this section, the parties may request that the panel chairman serve as the Board Neutral. In such a situation, if the ADR is unsuccessful,

(i) If the ADR has involved mediation, the panel chairman shall not retain the case, and

(ii) If the ADR has not involved mediation, the panel chairman, after considering the parties' views, shall decide whether to retain the case.

(2) *Retention and confidentiality of materials*. The Board will review materials submitted by a party for an ADR proceeding, but will not retain such materials after the proceeding is concluded

or otherwise terminated. Material created by a party for the purpose of an ADR proceeding is to be used solely for that proceeding unless the parties agree otherwise. Parties may request a protective order in an ADR proceeding in the manner provided in 6101.12(h).

(c) *Types of ADR.* ADR is not defined by any single procedure or set of procedures. The Board will consider the use of any technique proposed by the parties which is deemed to be fair, reasonable, and in the best interest of the parties, the Board, and the resolution of contract disputes. The following are examples of available techniques:

(1) *Mediation.* The Board Neutral, as mediator, aids the parties in settling their case. The mediator engages in *ex parte* discussions with the parties and facilitates the transmission of settlement offers. Although not authorized to render a decision in the dispute, the mediator may discuss with the parties, on a confidential basis, the strengths and weaknesses of their positions. No judge who has participated in discussions about the mediation will participate in a Board decision of the case if the ADR is unsuccessful.

(2) *Neutral case evaluation.* The parties agree to present to the Board Neutral information on which the Board Neutral bases a non-binding, oral, advisory opinion. The manner in which the information is presented will vary from case to case depending upon the agreement of the parties. Presentations generally fall between two extremes, ranging from an informal proffer of evidence together with limited argument from the parties to a more formal presentation of oral and documentary evidence and argument from counsel, such as through a mini-trial.

(3) *Binding decision.* One or more Board judges render a decision which, by prior agreement of the parties, is to be binding and non-appealable. As in the non-binding evaluation of a case by a Board Neutral, the manner in which information is presented for a binding decision may vary depending on the circumstances of the particular case.

(4) *Other procedures.* In addition to other ADR techniques, including modifications to those listed in this section, as agreed to by the Board and parties, the parties may use ADR techniques that do not require direct Board involvement.

(5) *Selective use of standard procedures.* Parties considering the use of ADR are encouraged to adapt for their purposes any provisions in part 6101 which they believe will be useful. This includes but is not limited to provisions concerning record submittals, pretrial discovery procedures, and hearings.

PART 6103—RULES OF PROCEDURE FOR TRANSPORTATION RATE CASES

Sec.

6103.1 Scope [Rule 301].
6103.2 Filing claims [Rule 302].
6103.3 Responses to claims [Rule 303].
6103.4 Reply to OTA and agency responses [Rule 304].
6103.5 Proceedings [Rule 305].
6103.6 Decisions [Rule 306].
6103.7 Reconsideration of Board decision [Rule 307].
6103.8 Payment of successful claims [Rule 308].

AUTHORITY: 31 U.S.C. 3726(g)(1); 41 U.S.C. 601–613. Section 201(o), Pub. L. 104–316, 110 Stat. 3826.

SOURCE: 62 FR 25867, May 12, 1997, unless otherwise noted.

6103.1 Scope [Rule 301].

(a) *Authority.* Section 201(o) of the General Accounting Office Act of 1996, Public Law 104–316, transfers certain functions of the Comptroller General contained in 31 U.S.C. 3726(g)(1) to the Administrator of General Services, who has redelegated those functions to the General Services Administration Board of Contract Appeals.

(b) *Type of claim; review of claim.* These procedures are applicable to the review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(g)(1). The Board will issue the final agency decision on a claim based on the information submitted by the claimant, the General Services Administration Office of Transportation Audits (OTA), and the department or agency (the agency) for which the services were provided. The burden is on the claimant to establish the timeliness of its claim, the liability of the agency, and the claimant's right to payment.

6103.2 Filing claims [Rule 302].

(a) *Form.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include:

(1) The name, address, telephone number, and facsimile machine number, if available, of the claimant;

(2) The Government bill of lading or Government transportation request number;

(3) The claimant's bill number;

(4) The Government voucher number and date of payment;

(5) The OTA claim number;

(6) The agency for which the services were provided; and

(7) Any other identifying information.

(b) *When and where claims are filed.* A claim is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. Claims should be sent to the Board at the following address: Office of the Clerk of the Board, Room 7022, General Services Administration Building, 1800 F Street, NW, Washington, DC 20405. The Clerk's telephone number is: (202) 501–0116. The Clerk's facsimile machine number is: (202) 501–0664. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(c) *Notice of docketing.* A claim will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to the claimant, the Director of OTA, and the agency for which the services were provided. The notice of docketing will identify the judge to whom the claim has been assigned.

(d) *Service of copy.* The claimant shall send to OTA and the agency identified in paragraph (a)(6) of this section copies of all material provided to the Board. All submissions to the Board by a claimant shall indicate that a copy has been provided to OTA and the agency.

6103.3 Responses to claims [Rule 303].

(a) *Content of responses.* Within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing if the agency office for which the services were provided is located outside the 50 states and the District of Columbia), OTA and the agency for which the services were provided shall each submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information deemed necessary to the Board's review of the claim.

(b) *Service of copy.* All responses submitted to the Board shall indicate that a copy has been sent to the claimant and to OTA or the agency, as appropriate. To expedite proceedings, if either OTA or the agency will not file a response (e.g., it believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant), it should notify the Board, the claimant, and OTA or the agency, as appropriate, that it does not intend to file a response.

6103.4 Reply to OTA and agency responses [Rule 304].

A claimant may file with the Board and serve on OTA and the agency a reply to the OTA and agency responses within 30 calendar days after receiving the responses (or within 60 calendar days after receiving the responses, if the claimant is located outside the 50 states and the District of Columbia). To expedite proceedings, if the claimant does not wish to respond, the claimant should so notify the Board, OTA, and the agency.

6103.5 Proceedings [Rule 305].

(a) *Requests for additional time.* The claimant, OTA, or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in ex parte communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant, OTA, and the agency at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Submissions.* The judge may require the submission of additional information at any time. The claimant, OTA, or the agency may request an opportunity to make additional submissions; however, no such submission may be made unless authorized by the judge.

6103.6 Decisions [Rule 306].

The judge will issue a written decision based upon the record, which includes submissions by the claimant, OTA, and the agency, and information provided during conferences. The claimant, OTA, and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: www.gsbca.gsa.gov.

6103.7 Reconsideration of Board decision [Rule 307].

A request for reconsideration may be made by the claimant, OTA, or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the claimant or agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

6103.8 Payment of successful claims [Rule 308].

The agency for which the services were provided shall pay amounts the Board determines are due the claimant.

PART 6104—RULES OF PROCEDURE FOR TRAVEL AND RELOCATION EXPENSES CASES

Sec.

6104.1 Scope [Rule 401].
6104.2 Filing claims [Rule 402].
6104.3 Response to claim [Rule 403].
6104.4 Reply to agency response [Rule 404].
6104.5 Proceedings [Rule 405].
6104.6 Decisions [Rule 406].
6104.7 Reconsideration of Board decision [Rule 407].
6104.8 Payment of successful claims [Rule 408].

AUTHORITY: 31 U.S.C. 3702; 41 U.S.C. 601–613; Sec. 201(n)(3), Pub. L. 104–316, 110 Stat. 3826.

SOURCE: 62 FR 25869, May 12, 1997, unless otherwise noted.

6104.1 Scope [Rule 401].

(a) *Authority.* These procedures govern the Board's resolution of claims by federal civilian employees for certain travel or relocation expenses that were formerly settled by the Comptroller General under 31 U.S.C. 3702. Section 201(n)(3) of the General Accounting Office Act of 1996, Public Law 104–316, transfers the authority to resolve these claims to the Administrator of General Services, who has redelegated that function to the General Services Administration Board of Contract Appeals. The requirements contained in 31 U.S.C. 3702, including limitations on the time within which claims may be filed, apply to the Board's review of these claims.

(b) *Types of claims.* These procedures are applicable to the review of two types of claims made against the United States by federal civilian employees:

(1) Claims for reimbursement of expenses incurred while on official temporary duty travel; and

(2) Claims for reimbursement of expenses incurred in connection with relocation to a new duty station.

(c) *Review of claims.* Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency's determination may request review of the claim by the Board. The burden is on the claimant to establish the timeliness of the claim, the liability of the agency, and the claimant's right to payment. The Board will issue the final decision on a claim based on the information submitted by the claimant and the agency.

6104.2 Filing claims [Rule 402].

(a) *Filing claims.* A claim may be sent to the Board in either of the following ways:

(1) *Claim filed by claimant.* A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include:

(i) The name, address, telephone number, and facsimile machine number, if available, of the claimant;

(ii) The name, address, telephone number, and facsimile machine number, if available, of the agency employee who denied the claim;

(iii) A copy of the denial of the claim; and

(iv) Any other information which the claimant believes the Board should consider.

(2) *Claim forwarded by agency on behalf of claimant.* If an agency has denied a claim for travel or relocation expenses, it may, at the claimant's request, forward the claim to the Board. The agency shall include the information required by paragraph (a)(1) of this section and by § 6104.3.

(3) *Where claims are filed.* A claim should be sent to the Board at the following address: Office of the Clerk of the Board, Room 7022, General Services Administration Building, 1800 F Street, NW, Washington, DC 20405. The Clerk's telephone number is: (202) 501–0116. The Clerk's facsimile machine number is: (202) 501–0664. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing.* A request for review will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the claimant and the agency contact. The notice of docketing will identify the judge to whom the claim has been assigned.

(c) *Service of copy.* The claimant shall send to the agency employee identified in paragraph (a)(1)(ii) of this section, or the individual otherwise identified by the agency to handle the claim, copies of all material provided to the Board. If an agency forwards a claim to the Board, it shall, at the same time, send to the claimant a copy of all material sent to the Board. All submissions to the Board shall indicate that a copy has been provided to the claimant or the agency.

6104.3 Response to claim [Rule 403].

(a) *Content of response.* When a claim has been filed with the Board by a claimant, within 30 calendar days after docketing by the Board (or within 60 calendar days after docketing, if the agency office involved is located outside the 50 states and the District of Columbia), the agency shall submit to the Board:

(1) A simple, concise, and direct statement of its response to the claim;

(2) Citations to applicable statutes, regulations, and cases; and

(3) Any additional information deemed necessary to the Board's review of the claim.

(b) *Service of copy.* A copy of these submissions shall also be sent to the claimant. To expedite proceedings, if the agency believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant, it should notify the Board and the claimant that it does not intend to file a response.

6104.4 Reply to agency response [Rule 404].

A claimant may file a reply to the agency response within 30 calendar days after receiving the response (or within 60 calendar days after receiving the response, if the claimant is located outside the 50 states and the District of Columbia). If the claim has been forwarded by the agency, the claimant shall have 30 calendar days from the time the claim is docketed by the Board (or 60 calendar days after docketing, if the claimant is located outside the 50 states and the District of Columbia) to reply. To expedite proceedings, if the claimant does not wish to reply, the claimant should so notify the Board and the agency.

6104.5 Proceedings [Rule 405].

(a) *Requests for additional time.* The claimant or the agency may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in ex parte communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant and the agency contact, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) Additional submissions. The judge may require the submission of additional information at any time.

6104.6 Decisions [Rule 406].

The judge will issue a written decision based upon the record, which includes submissions by the claimant and the agency, and information provided during conferences. The claimant and the agency will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: www.gsbca.gsa.gov.

6104.7 Reconsideration of Board decision [Rule 407].

A request for reconsideration may be made by the claimant or the agency. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the claimant or the agency office making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

6104.8 Payment of successful claims [Rule 408].

The agency shall pay amounts the Board determines are due the claimant.

PART 6105—RULES OF PROCEDURE FOR DECISIONS AUTHORIZED BY 31 U.S.C. 3529

Sec.

6105.1 Scope [Rule 501].
6105.2 Request for decision [Rule 502].
6105.3 Additional submissions [Rule 503].
6105.4 Proceedings [Rule 504].
6105.5 Decisions [Rule 505].
6105.6 Reconsideration of Board decision [Rule 506].

AUTHORITY: 31 U.S.C. 3529; 31 U.S.C. 3702; 41 U.S.C. 601–613; Secs. 202(n), 204, Pub. L. 104–316, 110 Stat. 3826; Sec. 211, Pub. L. 104–53, 109 Stat. 535.

SOURCE: 62 FR 25871, May 12, 1997, unless otherwise noted.

6105.1 Scope [Rule 501].

These procedures govern the Board's issuance of decisions, upon the request of an agency disbursing or certifying official, or agency head, on questions involving payment of travel or relocation expenses that were formerly issued by the Comptroller General under 31 U.S.C. 3529. Section 204 of the General Accounting Office Act of 1996, Public Law 104–316, transfers the authority to issue these decisions to the Director of the Office of Management and Budget, and authorizes the Director to delegate the authority to perform that function to another agency or agencies. The Director has delegated the authority to issue these decisions to the Administrator of General Services, who has redelegated that function to the General Services Administration Board of Contract Appeals.

6105.2 Request for decision [Rule 502].

(a) *Request for decision.* (1) A disbursing or certifying official of an agency, or the head of an agency, may request from the Board a decision (referred to as a ''Section 3529 decision'') on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

(i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and

(ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

(2) A request for a Section 3529 decision shall be in writing; no particular form is required. The request must refer to a specific payment or voucher; it may not seek general legal advice. The request should—

(i) Explain why the official is seeking a Section 3529 decision, rather than taking action on his or her own regarding the matter;

(ii) State the question presented and include citations to applicable statutes, regulations, and cases;

(iii) Include—

(A) The name, address, telephone number, and facsimile machine number (if available) of the official making the request;

(B) The name, address, telephone number, and facsimile number (if available) of the employee affected by the specific payment or voucher; and

(C) Any other information which the official believes the Board should consider; and

(iv) Be sent to the Office of the Clerk of the Board, Room 7022, General Services Administration Building, 1800 F Street, NW., Washington, DC 20405. The Clerk's telephone number is: (202) 501–0116. The Clerk's facsimile machine number is (202) 501–0664. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each day other than a Saturday, Sunday, or federal holiday.

(b) *Notice of docketing.* A request for a Section 3529 decision will be docketed by the Office of the Clerk of the Board. A written notice of docketing will be sent promptly to the official and the affected employee. The notice of docketing will identify the judge to whom the request has been assigned.

(c) *Service of copy*. The official submitting a request for a Section 3529 decision shall send to the affected employee copies of all material provided to the Board. All submissions to the Board shall indicate that a copy has been provided to the affected employee.

6105.3 Additional submissions [Rule 503].

If the affected employee wishes to submit any additional information to the Board, he or she must submit such information within 30 calendar days after receiving the copy of the request for decision and supporting material (or within 60 calendar days after receiving the copy, if the affected employee is located outside the 50 states and the District of Columbia). To expedite proceedings, if the employee does not wish to make an additional submission, the employee should so notify the Board and the agency.

6105.4 Proceedings [Rule 504].

(a) *Requests for additional time.* The agency or the affected employee may request additional time to make any filing.

(b) *Conferences.* The judge will not engage in ex parte communications involving the underlying facts or merits of the request. The judge may hold a conference with the agency and the affected employee, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) *Additional submissions.* The judge may require the submission of additional information at any time.

6105.5 Decisions [Rule 505].

The judge will issue a written decision based upon the record, which includes submissions by the agency and the affected employee, and information provided during conferences. The agency and the affected employee will each be furnished a copy of the decision by the Office of the Clerk of the Board. In addition, all Board decisions are posted weekly on the Internet. The Board's Internet address is: www.gsbca.gsa.gov.

6105.6 Reconsideration of Board decision [Rule 506].

A request for reconsideration may be made by the agency or the affected employee. Such requests must be received by the Board within 30 calendar days after the date the decision was issued (or within 60 calendar days after the date the decision was issued, if the agency or the affected employee making the request is located outside the 50 states and the District of Columbia). The request for reconsideration should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.

CHAPTER 63—DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS

(Parts 6300 to 6399)

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PART 6301—BOARD OF CONTRACT APPEALS

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6301.4 Ex parte communications.
6301.5 Contract appeals procedures (general).
6301.6 Effective date.

AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.*).

SOURCE: 52 FR 48630, Dec. 23, 1987, unless otherwise noted.

6301.0 Foreword.

A Department of Transportation Board of Contract Appeals has been established pursuant to Pub. L. 95–563. The Secretary appoints the members of the Board and designates the Chair and Vice-Chair of the Board.

6301.1 Scope of part.

(a) *Scope.* This part prescribes the functions and procedures of the Department of Transportation Board of Contract Appeals and provides for the appointment of a Chair, a Vice-Chair, and Members of the Board, and sets forth their duties.

(b) *Definitions.* For the purposes of this part—

Administrative Judge means a member of the Board selected and appointed to serve pursuant to the Contract Disputes Act of 1978;

Appellant means the contractor who appeals;

Board means the Department of Transportation Board of Contract Appeals;

Contracting officer means the Government's contracting officer whose decision is appealed, or the successor contracting officer;

Parties means the appellant and the contracting officer, and

Secretary means the Secretary of Transportation.

6301.2 Qualifications of members.

Each member of the Board must be a qualified attorney who is admitted to practice before the highest court of a State or the District of Columbia. Members of the Board are selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code, with the additional requirement that each member shall have had not fewer than five years experience in public contract law.

6301.3 Jurisdiction and authority of the Board and its members.

(a) The Board hears and decides:

(1) Appeals from decisions made by contracting officers relating to contracts of the Department of Transportation and its constituent administrations;

(2) Appeals from decisions of contracting officers relating to contracts of any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal;

(3) Matters within jurisdiction of the Board in accordance with the provisions of the Contract Disputes Act, 41 U.S.C. 600 *et seq.*; and

(4) Other matters as directed by the Secretary which are not inconsistent with statutory duties.

In each case, the Board shall make a final decision which is impartial, fair, and just to the parties and is supported by the record of the case and the law. The Administrative Judge assigned to hear an appeal has authority to act for the Board in all matters with respect to such appeal. Included in such authority is the authority to sign subpoenas and the power to authorize the Recorder of the Board to issue subpoenas pursuant to section 11 of the Contract Disputes Act of 1978. (41 U.S.C. 610)

(b) An Administrative Judge may not act for the Board or participate in a decision if that Judge has participated directly in any aspect of the award or administration of the contract involved.

(c) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three Administrative Judges of the Board. The decision of a majority of the panel shall constitute the decision of the Board.

6301.4 Ex parte communications.

Ex parte communications, that is, written or oral communications with the Board by or for one party only without notice to the other, are not permitted. No member of the Board or of the Board's staff shall consider, nor shall any person directly or indirectly involved in an appeal submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

6301.5 Contract appeals procedures (general).

(a) It is the intent of these rules to provide for the just and inexpensive determination of appeals without unnecessary delay. It is the objective of the Board's preliminary procedures to encourage full disclosure of relevant and material facts, and to discourage surprise. Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. The Board may extend any time limitation for good cause and in accordance with legal precedent.

(b) Ordinarily, the appellant has the burden of proof.

(c) The rules of procedure at 6302 shall govern the procedures in all contract disputes appealed to the Board.

6301.6 Effective date.

This chapter shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and upon the contractor's election of Contract Disputes Act procedures, to appeals relating to earlier contracts with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

PART 6302—RULES OF PROCEDURE

Sec.

6302.1 How to appeal a contracting officer's decision (Rule 1).
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6302.37 Sanctions (Rule 37).
6302.38 Remand from court (Rule 38).

AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.)*.

SOURCE: 52 FR 48631, Dec. 23, 1987, unless otherwise noted.

6302.1 How to appeal a contracting officer's decision (Rule 1).

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days

from the date of receipt of a contracting officer's decision. A copy of the notice shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraph (b) or (c) of this section, the Board, at its option, may stay further proceedings pending issuance of a final decision by the contracting officer within the time fixed by the Board or order the appeal to proceed without the contracting officer's decision.

6302.2 Contents of notice of appeal (Rule 2).

A notice of appeal must indicate that an appeal is intended and identify the contract number, the administration, bureau, or office concerned with the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal shall be signed by the appellant, or by an officer of an appellant corporation or member of an appellant firm, or by an appellant's authorized representative or attorney.

6302.3 Docketing of appeals (Rule 3).

Following receipt by the Board of the original notice of appeal, the appellant and the contracting officer are promptly notified of its receipt and docketing by the Board, and the Board furnishes a copy of these rules to the appellant.

6302.4 Preparation, contents, organization, forwarding, and status of appeal file (Rule 4).

(a) *Duties of contracting officer.* Within 30 days after receipt of notice that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board, with a copy to the appellant and the Government attorney, an appeal file consisting of all documents pertinent of the appeal, including:

(1) The contracting officer's decision and finding of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, modifications, plans, and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant may supplement the file by transmitting to the Board any additional documents which it considers pertinent to the appeal and shall furnish two copies of such documents to the Government attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file. The contracting officer's final decision and the contract shall be conveniently placed in the file for ready reference.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, the other

party shall be notified that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) *Status documents in appeal file.* Documents contained in the appeal file are, without further action by the parties, a part of the record upon which the Board renders its decision, unless a party objects to the consideration of a particular document at or before the hearing or, if there is no hearing on the appeal, before closing the record. If objection to a document is made, the Board rules upon its admissibility into the record as evidence in accordance with Rules 17 and 23.

6302.5 Service of documents (Rule 5).

A copy of every written communication submitted to the Board shall be sent to every party to the dispute. Such communications shall be sent by delivering in person or by mailing, properly addressed with postage prepaid, to the opposing party or, where the party is represented by counsel, to its counsel. Each communication with the Board shall be accompanied by a statement, signed by the originating party, saying when, how, and to whom a copy was sent.

6302.6 Computation and extension of time limits (Rule 6).

(a) *Computation.* Except as otherwise provided by law, in computing any period of time prescribed by these rules, or by any order of the Board, the day of the event from which the designated period of time begins to run is not included, but the last day of the period is included unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs to the end of the next business day.

(b) *Extensions.* All requests for extensions of time shall be submitted to the Board in writing and shall state good cause for the request.

6302.7 Motions (Rule 7).

(a) Motions are made by filing an original and two copies, together with any supporting papers, with the Board. Motions may also be made upon the record, in the presence of the other party, at a prehearing conference or a hearing. The Board considers any timely motion:

(1) For extensions of time (Rule 6) or to cure defaults;

(2) To require that a pleading be made more definite and certain, or for leave to amend a pleading (Rule 14);

(3) To dismiss for lack of jurisdiction (Rule 34); to dismiss for failure to prosecute (Rule 36); or to grant summary relief because a pleading does not raise a justifiable issue;

(4) For discovery, for interrogatories to a party, or for the taking of depositions (Rules 18 and 19);

(5) To reopen a hearing; or to reconsider a decision (Rule 33), or

(6) For any other appropriate order.

(b) The Board may, on its own motion, initiate any such action by notice to the parties. Unless a longer time is allowed by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt. The Board makes an order on each motion that is appropriate and just to the parties, and upon conditions that will promote efficiency in disposing of the appeal.

(c) The Board may permit oral hearing or argument on motions, and may require the presentation of briefs.

6302.8 Appellant's election of procedures (Rule 8).

(a) In every appeal the appellant is required to elect one of the following procedures:

(1) A hearing under the Board's regular procedure (Rule 12);

(2) A hearing under the SMALL CLAIMS (EXPEDITED) procedure, if applicable (Rule 9);

(3) A hearing under the Board's ACCELERATED procedure, if applicable (Rule 10), or

(4) Submission on the written record or without a hearing (Rule 11). Also see Rule 11 with respect to the Government's right to waive a hearing.

(b) The SMALL CLAIMS (EXPEDITED) procedure is available where the amount in dispute is $10,000 or less (Rule 9). The ACCELERATED procedure is available where the amount in dispute is $50,000 or less (Rule 10). In deciding whether the SMALL CLAIMS (EXPEDITED) or ACCELERATED procedure is applicable to an appeal, any

question regarding the amount in dispute shall be determined by the Board.

(c) The appellant's election of one of the above procedures shall be made in writing within 30 days after receipt of the appeal file unless such period is extended by the Board for good cause shown. The election may not be withdrawn except with permission of the Board and for good cause shown.

6302.9 The SMALL CLAIMS (EXPEDITED) procedure (Rule 9).

(a) The SMALL CLAIMS (EXPEDITED) procedure provides for simplified rules of procedure to facilitate the decision of an appeal, whenever possible, within 120 days from the date such procedure is elected.

(b) Promptly upon receipt of an appellant's election of the SMALL CLAIMS (EXPEDITED) procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether the appellant desires a hearing and, if so, fix a time and place for the hearing, and

(4) Establish a schedule for the expedited resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the SMALL CLAIMS (EXPEDITED) procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, of closing the record at an early time so as to permit a decision of the appeal within the 120-day time limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 120-day time limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the SMALL CLAIMS (EXPEDITED) procedure are rendered by a single Administrative Judge. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. If there has been a hearing on the appeal, the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered, the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure shall have no value as precedent. Except in cases of fraud, decisions rendered under the SMALL CLAIMS (EXPEDITED) procedure may not be appealed by either party.

6302.10 The ACCELERATED procedure (Rule 10).

(a) The ACCELERATED procedure makes available a procedure where the appeal is resolved, whenever possible, within 180 days from the date such procedure is elected.

(b) Promptly upon receipt of appellant's election of the ACCELERATED procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired and, if so, fix a time and place for a hearing; and

(4) Establish a schedule for the accelerated resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the ACCELERATED procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to

the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, the closing of the record at an early time so as to permit decision of the appeal with the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the ACCELERATED procedure are rendered by a single Administrative Judge, subject to the concurrence of the Vice-Chair or another assigned Administrative Judge. In the event of an even division on an appeal, the Chair participates in the decision of the appeal. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. In cases where the amount in dispute is $10,000 or less and there has been a hearing under the ACCELERATED procedure the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the ACCELERATED procedure are published and have precedential value. Such decisions may be appealed by either party.

6302.11 Submission of appeal without a hearing (Rule 11).

Either party may elect to waive a hearing and to submit its case upon the record before the Board pursuant to Rule 17. Submission of a case without hearing does not relieve a party from the necessity of proving the facts supporting that party's allegation or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested) and by briefs in accordance with Rule 26.

6302.12 Regular procedure (Rule 12).

Under the regular procedure the parties are required to file pleadings with the Board (Rule 13). The regular procedure affords the parties an opportunity to make full use of prehearing and discovery procedures. Hearings under the regular procedure are conducted in the same manner as before courts of the United States in non-jury trials.

6302.13 Pleadings (Rule 13).

(a) *Complaint.* Under the regular procedure the appellant, within 30 days after receipt of the appeal file, shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. If the complaint is not filed within 30 days and, in the opinion of the Board, the issues before the Board are sufficiently defined, the appellant's claim and notice of appeal may be deemed to be its complaint, and the parties are so notified.

(b) *Answer.* Within 30 days from receipt of said complaint or a Rule 13(a) notice from the Board, the Government shall file with the Board an original and two copies of an answer, setting forth simple, concise, and direct statements of the Government's defense to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer and shall set forth any affirmative defenses as appropriate. Should the answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the parties are so notified.

6302.14 Amendments of pleadings or record (Rule 14).

(a) *Pleadings.* The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The application for such an order suspends the time for responsive pleading. The Board may, in its discretion and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions just to both parties.

(b) *Record.* When an issue within the proper scope of the appeal, but not raised by the pleadings, is tried by consent of the parties or by permission of the Board, the issue is treated in all respects as if it had been raised. A motion to amend the pleadings to conform to the proof may be made but is not required. If evidence is objected to at a hearing on the ground that it is not within an issue raised by the pleadings, it may be admitted in evidence, but the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

6302.15 Prehearing briefs (Rule 15).

The Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected under the regular procedure. (Rule 8(a)(1)). If the Board does not ask for briefs, either party may, upon notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

6302.16 Prehearing conference (Rule 16).

(a) Whether the case is to be submitted on the written record or be heard under any hearing procedure, the Board, upon its own initiative or upon the application of any party, may call upon the parties to appear before the Board for a conference to consider:

(1) The simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses and the avoidance of similar cumulative evidence;

(4) The possibility of agreement disposing of all or any of the issues in dispute, and

(5) Such other matters as may aid in the disposition of the appeal. The result of the conference is set forth in an appropriate memorandum or order which becomes part of the record.

(b) In addition to the procedures provided in paragraph (a) of this section, the Board may direct any party whose claim is based in whole or in part on books of account or other records to furnish to the other party a statement showing the items and figures intended to be proved, with adequate reference to the books and records from which such figures were taken, and to make all such books and records available for examination by the other party. The Board may also direct any party to whom such a statement of items and figures has been submitted:

(1) To make an examination of such books or records or waive challenge of the accuracy of the statement submitted as reflecting the contents of such books and records; and

(2) To furnish the submitting party a schedule or schedules showing the results of such examination, with specific references to the books and records from which such figures were taken, where the examining party's results and figures are different from those contained in the statement submitted.

6302.17 The record of the appeal (Rule 17).

(a) *Contents.* The record upon which the Board's decision is rendered consists of the appeal file, (Rule 4) and, if filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions and interrogatories and answers to interrogatories received in evidence, admissions, stipulations, transcripts of hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically made a part of the record. The record is available for inspection at the

offices of the Board at all reasonable times.

(b) *Time of closing the record.* Except as the Board, in its discretion, may otherwise order, no proof is received in evidence after completion of the hearing of the appeal or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight of the evidence.* The weight to be attached to any evidence of record rests within the sound discretion of the Board. The Board may require any party to submit additional evidence on any matter relevant to the appeal.

6302.18 Discovery-depositions (Rule 18).

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, or provisions for protecting the secrecy of confidential information or documents.

(b) *Obtaining a deposition.* After an appeal has been docketed, the parties may voluntarily agree to take, or the Board may, upon application of either party and for good cause shown, order the taking of, testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for such order shall specify whether the purpose of the deposition is for discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions are as mutually agreed upon by the parties, or failing such agreement, as ordered by the Board.

(d) *Use of evidence.* No testimony taken by deposition is considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Testimony by deposition is not ordinarily received in evidence if the deponent is present and can testify at the hearing. However, any deposition may be used to contradict or impeach the testimony of a witness at the hearing. In cases submitted on the record, the Board, in its discretion, may receive depositions as evidence to supplement the record.

(e) *Expenses.* Each party bears its own expenses associated with discovery, unless, in the discretion of the Board, the expenses are apportioned otherwise.

(f) *Subpoenas.* Where appropriate, any party may request that a subpoena be issued under the provisions of Rule 24.

[52 FR 48631, Dec. 23, 1987, as amended at 53 FR 34106, Sept. 2, 1988]

6302.19 Interrogatories to parties, admission of facts, and inspection of documents (Rule 19).

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath, and returned within 30 days of receipt by the answering party. Within 30 days after service the answering party may object to any interrogatory and the Board determines the extent to which the interrogatory is permitted.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a written request for the admission of specified facts. If the request is to admit the genuineness of any document or the truth of any facts stated in a document, a copy of such document shall be served with the request. Within 30 days after receipt of the request, the party served shall answer each requested admission of facts or file objections thereto in writing. The factual propositions set out in the request are deemed admitted, if the answering party, willfully and without good cause, fails to respond to the request for admissions.

(c) *Production and inspection of documents.* After an appeal has been filed with the Board, a party may serve upon the other party a written request to produce and permit the inspection and

copying or photographing of any designated documents, not privileged, regarding any matter which is relevant to the appeal.

(d) Any discovery under this rule shall be subject to the provisions of Rule 18(a) with respect to general policy and protective orders.

6302.20 Time and place of hearing (Rule 20).

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, the requirements for accelerated or expedited procedures and other pertinent factors. On request of any party and for good cause, the Board, may, in its discretion, change the date of hearing.

6302.21 Notice of hearing (Rule 21).

The parties are given at least 15 days notice of the time and place set for hearing. In scheduling hearings, the Board gives due regard to the desires of the parties and the requirement for the just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

6302.22 Unexcused absence of a party (Rule 22).

The unexcused absence of a party at the time and place set for hearing is not an occasion for delay. In the event of such absence, the presiding Administrative Judge may order the hearing to proceed or, in his or her discretion, may invoke the provisions of Rule 36.

6302.23 Nature of hearings (Rule 23).

(a) Hearings are as informal as may be reasonable and appropriate under the circumstances. At the hearing the parties may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presenting the evidence. In general, admissibility is governed by relevancy and materiality. Copies of documents, affidavits, or other evidence not ordinarily admissible under judicial rules or evidence, may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form is within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. In any case, the Board may require evidence in addition to that offered by the parties.

(b) Witnesses before the Board are examined orally under oath or affirmation, unless the facts are stipulated, or the Board otherwise orders.

6302.24 Subpoenas (Rule 24).

(a) *General.* Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and, if appropriate, to produce books, papers, documents, or tangible things, at a time and place therein specified. Subpoenas (including those calling for the production of documentary evidence) are signed by an Administrative Judge or by the Recorder of the Board but otherwise left blank when furnished to the party requesting the subpoena. The party to whom the subpoena is issued shall fill it in before service.

(b) *Subpoenas for attendance at hearing.* At the request of any party, subpoenas for the attendance of witnesses at a hearing are issued. A subpoena requiring the attendance of a witness at a hearing may be served at any place within 100 miles of the place of hearing specified in the subpoena; but the Board, upon proper application and for good cause shown by the requesting party, may authorize the service of a subpoena at any other place.

(c) *Subpoenas for production of documentary evidence.* A subpoena, in addition to requiring attendance to testify, may also command any person to whom it is directed to produce books, papers, documents, or tangible things designated therein. A subpoena calling

for such production shall show the general relevance and reasonable scope of the evidence sought.

(d) *Subpoenas for taking depositions.* Subpoenas in aid of depositions (including those for the production of books, papers, documents, or tangible things) may be issued by the Recorder of the Board upon a showing that the parties have agreed to, or the Board has ordered, the taking of depositions under Rule 18. The service of subpoenas in aid of depositions shall be limited to the city or county wherein the witness resides or is employed or transacts business in person. If a subpoena is desired at other locations, a specific ruling of the Board is required.

(e) *Request to quash or modify.* Upon written request by a person under subpoena or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable costs of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(f) *Foreign country.* A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner, and be served as provided in 28 U.S.C. 1781–1784.

(g) *Service.* A subpoena may be served by a United States Marshal or a deputy, or by any person not a party who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by tendering the subpoena to that person with the fees for one day's attendance and the mileage allowed by law (28 U.S.C. 1821). When the subpoena is issued on behalf of the United States or an officer or agency of the United States, fees and mileage need not be tendered.

(h) *Fees.* The party at whose instance a subpoena is issued shall be responsible for the payment of witness fees and mileage, as well as the fees and mileage of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books, papers, documents, or tangible things produced.

(i) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

6302.25 Copies of papers (Rule 25).

When books, records, papers, or documents have been received in evidence, a true copy or any material or relevant part may be substituted during or at the conclusion of the hearing.

6302.26 Posthearing briefs (Rule 26).

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge at the conclusion of the hearing.

6302.27 Transcript of proceedings (Rule 27).

Testimony and argument at hearings are reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings are supplied to the parties and others at such rates as may be fixed by the Board.

6302.28 Withdrawal of exhibits (Rule 28).

After a decision has become final, the Board, in its discretion, upon request and after notice to the other party, may direct or permit the withdrawal of all or part of original exhibits. The substitution of true copies of exhibits or photographs of physical objects may be required by the Board as a condition of withdrawal.

6302.29 Representation of the parties (Rule 29).

(a) *The Appellant.* An individual appellant may appear before the Board in person, a corporation by an officer, a partnership or joint venture by a member, or any of these by an attorney-at-law admitted to practice before the highest court of the District of Columbia or any state, commonwealth, or territory of the United States. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board.

6302.30 Alternative dispute resolution methods (Rule 30).

(a) To facilitate settlements in cases which might involve lengthy hearings (in excess of one week) of complex factual disputes and settled legal principles, the Board has adopted two methods of Alternative Dispute Resolution (ADR): Settlement Judges and Mini-Trials. These procedures are designed to supplement existing settlement techniques and not to replace them. Procedures regarding implementation of these ADR methods will be distributed to the parties, in appropriate cases, but may be obtained from the Board upon request.

(b) To employ ADR both parties must initially agree to use an ADR method. The parties must communicate that agreement in writing to the presiding judge as early as possible, preferably before commencement of voluntary discovery. The presiding judge shall promptly decide the appropriateness of the ADR method requested and so advise the parties. Where, after application of an ADR method, the parties are unable to resolve a dispute, the matter shall be restored to the docket of the presiding judge for hearing.

[53 FR 34106, Sept. 2, 1988]

6302.31 Settlement (Rule 31).

A dispute may be settled at any time before the Board renders its decision by the appellant filing a written notice withdrawing the appeal or by written stipulation of the parties settling the dispute. Proceedings may be suspended while the parties are considering settlement.

6302.32 Decisions (Rule 32).

Decisions of the Board are rendered in writing. Copies are forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions are open for public inspection at the offices of the Board in Washington, DC. Decisions of the Board are made solely upon the record, as described in Rule 17.

6302.33 Motion for reconsideration (Rule 33).

A motion for reconsideration shall set forth specifically the grounds relied upon to sustain the motion and shall be *mailed or otherwise furnished* within 30 days from the date of receipt of a copy of the Board's decision.

6302.34 Dismissal for lack of jurisdiction (Rule 34).

Any motion addressed to the jurisdiction of the Board shall be promptly filed. A hearing on the motion may be afforded on application of either party. The Board has the right at any time on its own motion to raise the issue of its jurisdiction to proceed with a particular case and do so by an appropriate order, affording the parties an opportunity to be heard.

6302.35 Dismissal without prejudice (Rule 35).

When the Board is unable to proceed with disposition of an appeal for reasons not within its control, such appeal is placed in a suspense status. In any case where such suspension has continued, or it appears that it may continue for a period in excess of one year, the Board may dismiss the appeal without prejudice to its restoration to the Board's docket when the cause of suspension has been eliminated. Unless either party or the Board acts to reinstate any appeal so dismissed within three years from the date of dismissal, the dismissal is automatically converted to a dismissal with prejudice without further action by the parties or the Board.

6302.36 Dismissal for failure to prosecute or defend (Rule 36).

Whenever a record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates a party's intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be dismissed or granted, as appropriate.

6302.37 Sanctions (Rule 37).

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

6302.38 Remand from court (Rule 38).

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board considers the reports and enters special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders conform to these rules.

CHAPTER 99—COST ACCOUNTING STANDARDS BOARD, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

(Parts 9900 to 9999)

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PART 9900—SCOPE OF CHAPTER

AUTHORITY: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

9900.000 Scope of chapter.

This chapter describes policies and procedures for applying the Cost Accounting Standards (CAS) to negotiated contracts and subcontracts. This chapter does not apply to sealed bid contracts or to any contract with a small business concern (see 9903.201–1(b) for these and other exemptions).

[57 FR 14153, Apr. 17, 1992]

SUBCHAPTER A—ADMINISTRATION

PART 9901—RULES AND PROCEDURES

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AUTHORITY: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

SOURCE: 56 FR 19304, Apr. 26, 1991, unless otherwise noted.

9901.301 Purpose.

This part is published in compliance with Public Law 100–679, section 5(f)(3), 41 U.S.C. 422(f)(3), and constitutes the rules and procedures governing actions and the administration of the Cost Accounting Standards Board.

9901.302 Authority.

(a) The Cost Accounting Standards Board (hereinafter referred to as the ''Board'') is established by and operates in compliance with Public Law 100–679.

(b) The Board has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and regulations, including interpretations thereof, designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment, and allocation of costs to contracts with the United States Government.

(c) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations promulgated under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to Public Law 100–679.

9901.303 Offices.

The Cost Accounting Standards Board's offices are located in the New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. The hours of business for the Board are 9 a.m. to 5:30 p.m., local time, Monday through Friday, excluding holidays observed by the Federal Government in Washington, DC.

9901.304 Membership.

The Board consists of five members, including the Administrator of the Office of Federal Procurement Policy (hereinafter referred to as the ''Administrator'') who shall serve as Chairman, and four other members with experience in Government contract cost accounting who are to be appointed as follows:

(a) A representative of the Department of Defense appointed by the Secretary of Defense.

(b) An officer or employee of the General Services Administration appointed by the Administrator of the General Services Administration or his/her designee.

(c) A representative of industry appointed from the private sector by the Administrator.

(d) An individual who is particularly knowledgeable about cost accounting problems and systems appointed from the private sector by the Administrator.

(e) The term of office of each of the members of the Board, other than the Administrator, shall be four years, with the exception of the initial appointment of members. Of the initial appointments to the Board, two members shall hold appointment for a term of two years, one shall hold appointment for a term of three years, and one shall hold appointment for a term of four years.

(f) The members from the Department of Defense and the General Services Administration shall not be permitted to continue to serve on the Board after ceasing to be an officer or

employee of their respective appointing agency. A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member may be reappointed for a subsequent term(s). Any member appointed to fill an interim vacancy on the Board shall serve for the remainder of the term for which his or her predecessor was appointed.

(g) In the event of the absence or incapacity of the Administrator or during a vacancy in the office, the official of the Office of Federal Procurement Policy, acting as Administrator, shall serve as the Chairman of the Board.

(h) In the event of the absence of any of the other Board members, a representative of that Board member may attend the Board meeting, but shall have no vote, and his or her attendance shall not be counted to establish a quorum.

9901.305 Requirements for standards and interpretive rulings.

Prior to the promulgation of cost accounting standards and interpretations thereof, the Board shall:

(a) Take into account, after consultation and discussion with the Comptroller General, professional accounting organizations, contractors, government agencies and other interested parties:

(1) The probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

(2) The advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contacts; and

(3) The scope of, and alternatives available to, the action proposed to be taken.

(b) Prepare and publish a report in the FEDERAL REGISTER on issues reviewed under paragraph (a) of this section.

(c) Publish an advance notice of proposed rulemaking in the FEDERAL REGISTER in order to solicit comments on the report prepared pursuant to paragraph (b) of this section, and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments. During this 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make.

(d) Publish a notice of such proposed rulemaking in the FEDERAL REGISTER and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

(e) Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board, shall have the full force and effect of law and shall become effective within 120 days after publication in the FEDERAL REGISTER in final form, unless the Board determines a longer period is necessary. Implementation dates for contractors and subcontractors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of affected contractors or subcontractors after the standard becomes effective. Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) The above functions exercised by the Board are excluded from the operations of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $500,000, other than contracts or subcontracts that have been exempted by the Board's regulations.

9901.307 Exemptions and waivers.

The Board may exempt classes or categories of contractors and subcontractors from cost accounting standards requirements, and establish procedures for waiver of the requirements with respect to individual contracts and subcontracts. The official

records of the Board shall be documented with supporting justification for class or category exemptions and individual waivers.

9901.308 Meetings.

The Board shall meet at the call of the Chairman. Agenda for Board meetings shall be proposed by the Chairman, but any Board member may request any item to be placed on the agenda.

9901.309 Quorum.

Three Board members, at least one of whom is appointed by the Administrator from the private sector, shall constitute a quorum of the Board.

9901.310 Board action.

Board action shall be by majority vote of the members present and voting, except that any vote to publish a proposed standard, rule or regulation in the FEDERAL REGISTER for comment or any vote to promulgate, amend or rescind a standard, rule or regulation, or any interpretation thereof, shall require at least three affirmative votes for the five Board members. The Chairman may vote on all matters presented for a vote, not merely to resolve tie votes. The results of final votes shall be reported in the minutes of the meeting, and the vote of a Board member may be recorded at his/her request.

9901.311 Executive sessions.

During the course of a Board meeting, any Board Member may request that for any portion of the meeting, the Board meet in executive session. The Chairman shall thereupon order such a session.

9901.312 Minutes.

The Executive Secretary of the Board shall be responsible for keeping accurate minutes of Board meetings and maintaining Board files.

9901.313 Public hearings.

Public hearings to assist the Board in the development and explanation of cost accounting standards and interpretive rulings may be held to the extent the Board in its sole discretion deems desirable. Notice of such hearings shall be given by publication in the FEDERAL REGISTER.

9901.314 Informal actions.

The Chairman may take actions on behalf of the Board on administrative issues, as determined by the Chairman, without holding an official meeting of the members. However, details of the actions so taken shall be provided to all of the members at the next Board meeting following such actions. Board members may be polled by telephone on other issues that must be processed on a timely basis when such matters cannot be deferred until the next formal meeting of the Board.

9901.315 Executive Secretary.

The Board's staff of professional, technical and supporting personnel is directed and supervised by the Executive Secretary.

9901.316 Files and records.

The files and records of the Board shall be maintained in accordance with the *Federal Records Creation, Maintenance, and Disposition Manual* of the Executive Office of The President, Office of Administration. As a minimum, the files and records shall include:

(a) A record of every Board meeting, including the minutes of Board proceedings and public hearings.

(b) Cost accounting standards promulgated, amended, or rescinded and interpretations thereof along with the supporting documentation and applicable research material.

(c) Applicable working papers, memoranda, research material, etc. related to issues under consideration by the Board and/or previously considered by the Board.

(d) Substantive regulations and statutes of general applicability and general policy and interpretations thereof.

(e) Any other file or record deemed important and relevant to the duties and responsibilities of the Board.

9901.317 Amendments.

This Part 9901, Rules and Procedures, may be amended by the Chairman, after consultation with the Board.

PART 9902—[RESERVED]

SUBCHAPTER B—PROCUREMENT PRACTICES AND COST ACCOUNTING STANDARDS

PART 9903—CONTRACT COVERAGE

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AUTHORITY: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

SOURCE: 57 FR 14153, Apr. 17, 1992, unless otherwise noted.

Subpart 9903.1—General

9903.101 Cost Accounting Standards.

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.

9903.102 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. OMB has assigned Control Numbers 0348–0051 and 0348–0055 to the paperwork, recordkeeping and forms associated with this regulation.

[57 FR 14153, Apr. 17, 1992, as amended at 59 FR 55753, Nov. 8, 1994]

Subpart 9903.2—CAS Program Requirements

9903.201 Contract requirements.

9903.201–1 CAS applicability.

(a) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904 or 9905, as applicable.) Negotiated contracts not exempt in accordance with 9903.201–1(b) shall be subject to CAS. A CAS-covered contract may be subject to full, modified or other types of CAS coverage. The rules for determining the applicable type of CAS coverage are in 9903.201–2.

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

(1) Sealed bid contracts.

(2) Negotiated contracts and subcontracts not in excess of $500,000. For purposes of this paragraph (b)(2) an order issued by one segment to another segment shall be treated as a subcontract.

(3) Contracts and subcontracts with small businesses.

(4) Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned, any contract or subcontract awarded to a foreign concern.

(5) Contracts and subcontracts in which the price is set by law or regulation.

(6) Firm fixed-priced and fixed-price with economic price adjustment (provided that price adjustment is not based on actual costs incurred) contracts and subcontracts for the acquisition of commercial items.

(7)–(11) [Reserved]

(12) Contracts and subcontracts awarded to the United Kingdom contractor for performance substantially in the United Kingdom, provided that the contractor has filed with the United Kingdom Ministry of Defence, for retention by the Ministry, a completed Disclosure Statement (Form No. CASB–DS–1) which shall adequately describe its cost accounting practices. Whenever that contractor is already required to follow U.K. Government Accounting Conventions, the disclosed practices shall be in accord with the requirements of those conventions. (See 9903.201–4(d).)

(13) Subcontractors under the NATO PHM Ship program to be performed outside the United States by a foreign concern.

(14) Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions.

(15) Firm-fixed-price contracts and subcontracts awarded without submission of any cost data.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992, as amended at 58 FR 58801, Nov. 4, 1993; 59 FR 55753, Nov. 8, 1994; 60 FR 16540, Mar. 30, 1995; 61 FR 39361, July 29, 1996; 62 FR 31295, June 6, 1997]

9903.201–2 Types of CAS coverage.

(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS specified in part 9904 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. Full coverage applies to contractor business units that—

(1) Receive a single CAS-covered contract award of $25 million or more; or

(2) Received $25 million or more in net CAS-covered awards during its preceding cost accounting period, of which, at least one award exceeded $1 million.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs, and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather than full, CAS coverage may be applied to a covered contract of less than $25 million awarded to a business unit that received less than $25 million in net CAS-covered awards in the immediately preceding cost accounting period. It also applies to covered contracts of business units that received more than $25 million in net CAS covered awards in the immediately preceding cost accounting period, wherein no single contract award exceeded $1 million.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to the business unit during that cost accounting period must also have modified coverage with the following exception: if

the business unit receives a single CAS-covered contract award of $25 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(3) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

(c) *Coverage for educational institutions*—(1) *Regulatory requirements.* Parts 9903 and 9905 apply to educational institutions except as otherwise provided in this paragraph (c) and at 9903.202–1(f).

(2) *Definitions.* (i) The following term is prominent in parts 9903 and 9905. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (c)(2)(ii) of this subsection below requires otherwise.

Educational institution means a public or nonprofit institution of higher education, e.g., an accredited college or university, as defined in section 1201(a) of Public Law 89–329, November 8, 1965, Higher Education Act of 1965; (20 U.S.C. 1141(a)).

(ii) The following modifications of terms defined elsewhere in this chapter 99 are applicable to educational institutions:

Business unit means any segment of an educational institution, or an entire educational institution which is not divided into segments.

Segment means one of two or more divisions, campus locations, or other subdivisions of an educational institution that operate as independent organizational entities under the auspices of the parent educational institution and report directly to an intermediary group office or the governing central system office of the parent educational institution. Two schools of instruction operating under one division, campus location or other subdivision would not be separate segments unless they follow different cost accounting practices, for example, the School of Engineering should not be treated as a separate segment from the School of Humanities if they both are part of the same division's cost accounting system and are subject to the same cost accounting practices. The term includes Government-owned contractor-operated (GOCO) facilities, Federally Funded Research and Developments Centers (FFRDCs), and joint ventures and subsidiaries (domestic and foreign) in which the institution has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the institution has less than a majority of ownership, but over which it exercises control.

(3) *Applicable standards.* Coverage for educational institutions requires that the business unit comply with all of the CAS specified in part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of $500,000, except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

(4) *FFRDCs.* Negotiated contracts awarded to an FFRDC operated by an educational institution are subject to the full or modified CAS coverage prescribed in paragraphs (a) and (b) of this subsection. CAS-covered FFRDC contracts shall be excluded from the institution's universe of contracts when determining CAS applicability and disclosure requirements for contracts other than those to be performed by the FFRDC.

(5) *Contract clauses.* The contract clause at 9903.201–4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds $500,000. For CAS-covered contracts awarded to a FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201–4 (a) or (c), as applicable, shall be incorporated.

(6) *Continuity in fully CAS-covered contracts.* Where existing contracts awarded to an educational institution incorporate full CAS coverage, the contracting officer may continue to apply full CAS coverage, as prescribed at 9903.201–2(a), in future awards made to that educational institution.

(d) *Subcontracts.* Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total net CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor.

(e) *Foreign concerns.* Contracts with foreign concerns subject to CAS shall only be subject to Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose.

[57 FR 14153, Apr. 17, 1992, as amended at 58 FR 58801, Nov. 4, 1993; 58 FR 65556, Dec. 15, 1993; 59 FR 48569, Sept. 22, 1994; 59 FR 55753, Nov. 8, 1994]

9903.201–3 Solicitation provisions.

(a) Cost Accounting Standards Notices and Certification. (1) The contracting officer shall insert the provision set forth below, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 9903.201. The provision allows offerors to—

(i) Certify their Disclosure Statement status;

(ii) [Reserved];

(iii) Claim exemption from full CAS coverage and elect modified CAS coverage when appropriate; and

(iv) Certify whether award of the contemplated contract would require a change to existing cost accounting practices.

(2) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall use the basic provision set forth below with its Alternate I, unless the contract is to be performed by an FFRDC (see 9903.201(c)(5)), or the provision at 9903.201(c)(6) applies.

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATIONS (JULY 1996)

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 9903.201–2(c)(5) or 9903.201–2(c)(6).

I. Disclosure Statement—Cost Accounting Practices and Certifications

(a) Any contract in excess of $500,000 resulting from this solicitation, except for those contracts which are exempt as specified in 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 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, 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 cognizant Federal agency official acting in that capacity and/or from the looseleaf 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 more than $25 million (of which at least one award exceeded $1 million) 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) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 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 subparagraph (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 $25 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 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 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 $25 million in awards of CAS-covered prime contracts and subcontracts, or the offeror did not receive a single CAS-covered award exceeding $1 million. 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 $25 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 $25 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 subparagraph (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 (OCT 1994)

Insert the following subparagraph (5) at the end of Part I of the basic clause:

☐ (5) Certificate of Disclosure Statement Due Date by Educational Institution. If the offeror is an educational institution that, under the transition provisions of 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):

☐ (a) A Disclosure Statement filing Due Date of _____ has been established with the cognizant Federal agency.

☐ (b) The Disclosure Statement will be submitted within the six 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: _____

_____

(End of Alternate I)

[57 FR 14153, Apr. 17, 1992; 57 FR 34079, Aug. 3, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 58 FR 61844, Nov. 23, 1993; 58 FR 65556, Dec. 15, 1993; 59 FR 55754, Nov. 8, 1994; 61 FR 39361, July 29, 1996]

9903.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraph (d) or (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS (MAY 1997)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of 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, disclosed in writing the Contractor's cost accounting practices as required by 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 subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 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 of 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 subparagraph (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 subparagraph (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 part 9904 or a CAS rule or regulation in part 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 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 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 9903.201–1.

(End of clause)

(b) [Reserved]

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000 but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (MAY 1997)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract, as indicated in 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 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 9903.201–6(b) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment 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 parts 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 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 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 9903.201–1.

(End of clause)

(d) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause set forth below, Consistency in Cost Accounting Practices, in negotiated defense 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 9903.201–1(b)(12)).

CONSISTENCY IN COST ACCOUNTING PRACTICES (APR 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)

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201–1), the contract is to be performed by an FFRDC (see 9903.201–2(c)(5)), or the provision at 9903.201–2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in part 9905, to disclose actual cost accounting practices as required by 9903.202–1(f), and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTIONS (JULY 1996)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of part 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 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 subparagraph (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 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 subparagraph (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 subparagraph (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 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 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(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 9903.201–1.

(End of clause)

[57 FR 14153, Apr. 17, 1992; 57 FR 34079, 34167, Aug. 3, 1992; 57 FR 43776, Sept. 22, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 58 FR 65556, Dec. 15, 1993; 59 FR 48568, Sept. 22, 1994; 59 FR 55755, Nov. 8, 1994; 61 FR 39361, July 29, 1996; 62 FR 31295, June 6, 1997]

9903.201–5 Waiver.

(a) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201–4(a), Cost Accounting Standards, or 9903.201–4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain—

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(b) Except as provided by the Cost Accounting Standards Board, the authority in 9903.201–5(a) shall not be delegated.

9903.201–6 Findings.

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), the Contracting Officer shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

(b) Prior to making any equitable adjustment under the provisions of paragraph (a)(3)(ii) of the contract clause set forth in 9903.201–4(c), the Contracting Officer shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

[57 FR 14153, Apr. 17, 1992, as amended at 59 FR 55756, Nov. 8, 1994]

9903.201–7 Cognizant Federal agency responsibilities.

(a) The requirements of part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts at each contractor business unit and the delegation of necessary contracting authority to agency individuals authorized to administer the terms and conditions of CAS-covered contracts, e.g., Administrative Contracting Officers (ACOs) or other agency officials authorized to perform in that capacity. Agencies are urged to coordinate on the development of such regulations.

[59 FR 55756, Nov. 8, 1994]

9903.202 Disclosure requirements.

9903.202–1 General requirements.

(a) A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. The submission of a new or revised Disclosure Statement is not required for any non-CAS-covered contract or from any small business concern.

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $25 million in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $500,000, unless (i) The contract or subcontract is of the type or value exempted by 9903.201–1 or (ii) In the most recently completed cost accounting period the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than $10 million.

(d) Each corporate or other home office that allocates costs to one or more disclosing segments performing CAS-covered contracts must submit a Part VIII of the Disclosure Statement.

(e) Foreign contractors and subcontractors who are required to submit a Disclosure Statement may, in lieu of filing a Form No. CASB–DS–1, make disclosure by using a disclosure form prescribed by an agency of its Government, provided that the Cost Accounting Standards Board determines that the information disclosed by that means will satisfy the objectives of Public Law 100–679. The use of alternative forms has been approved for the contractors of the following countries:

(1) Canada.

(2) Federal Republic of Germany.

(f) *Educational institutions—disclosure requirements.* (1) Educational institutions receiving contracts subject to the CAS specified in part 9905 are subject to the requirements of 9903.202, except that completed Disclosure Statements are required in the following circumstances.

(2) *Basic requirement.* For CAS-covered contracts placed on or after January 1, 1996, completed Disclosure Statements are required as follows:

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of $500,000 and is part of a college or university location listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required, however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than $25 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $25 million or more in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

(3) *Transition period requirement.* For CAS-covered contracts placed on or before December 31, 1995, completed Disclosure Statements are required as follows:

(i) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of the first 20 college or university locations (i.e., numbers 1 through 20) listed in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted within six months after the date of contract award.

(ii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of

the institutions numbered 21 through 50, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending twelve months after the date of contract award.

(iii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of the institutions numbered 51 through 99, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending eighteen months after the date of contract award.

(iv) For any other business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more, a Disclosure Statement shall be submitted within six months after the date of contract award.

(4) *Transition period due dates.* The educational institution and cognizant Federal agency should establish a specific due date within the periods prescribed in 9903.202–1(f)(3) when a Disclosure Statement is required under a CAS-covered contract placed on or before December 31, 1995.

(5) *Transition period waiver authority.* For a CAS-covered contract to be awarded during the period January 1, 1996, through June 30, 1997, the awarding agency may waive the preaward Disclosure Statement submission requirement specified in 9903.202–1(f)(2) when a due date for the submission of a Disclosure Statement has previously been established by the cognizant Federal agency and the educational institution under the provisions of 9903.202–1(f) (3) and (4).

CAUTION: This waiver authority is not available unless the cognizant Federal agency and the educational institution have established a disclosure statement due date pursuant to a written agreement executed prior to January 1, 1996, and award is made prior to the established disclosure statement due date.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 59 FR 55756, Nov. 8, 1994]

9903.202–2 Impracticality of submission.

The agency head may determine that it is impractical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. He shall, within 30 days of having done so, submit a report to the Cost Accounting Standards Board setting forth all material facts. This authority may not be delegated.

9903.202–3 Amendments and revisions.

Contractors and subcontractors are responsible for maintaining accurate Disclosure Statements and complying with disclosed practices. Amendments and revisions to Disclosure Statements may be submitted at any time and may be proposed by either the contractor or the Government. Resubmission of complete, updated, Disclosure Statements is discouraged except when extensive changes require it to assist the review process.

9903.202–4 Privileged and confidential information.

If the offeror or contractor notifies 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 the Government.

9903.202–5 Filing Disclosure Statements.

(a) Disclosure must be on Form Number CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant Federal agency (cognizant ACO or cognizant Federal agency official authorized to act in that capacity) or from the looseleaf version of the Federal Acquisition Regulation. When requested in advance by a contractor, the cognizant Federal agency may authorize contractor disclosure based on computer generated reproductions of the applicable Disclosure Statement Form.

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO or cognizant Federal agency official acting in that capacity, as applicable; and

(2) One copy with the cognizant Federal auditor.

(c) Amendments and revisions shall be submitted to the ACO or agency official acting in that capacity, as applicable, and the Federal auditor of the currently cognizant Federal agency.

[59 FR 55757, Nov. 8, 1994]

9903.202–6 Adequacy of Disclosure Statement.

Federal agencies shall prescribe regulations and establish internal procedures by which each will promptly determine on behalf of the Government, when serving as the cognizant Federal agency for a particular contractor location, that a Disclosure Statement has adequately disclosed the practices required to be disclosed by the Cost Accounting Standards Board's rules, regulations and Standards. The determination of adequacy shall be distributed to all affected agencies. Agencies are urged to coordinate on the development of such regulations.

[59 FR 55757, Nov. 8, 1994]

9903.202–7 [Reserved]

9903.202–8 Subcontractor Disclosure Statements.

(a) The contractor or higher tier subcontractor is responsible for administering the CAS requirements contained in subcontracts.

(b) If the subcontractor has previously furnished a Disclosure Statement to an ACO, the subcontractor may satisfy the submission requirement by identifying to the contractor or higher tier subcontractor the ACO to whom it was submitted.

(c)(1) If the subcontractor considers the Disclosure Statement (or other similar information) privileged or confidential, the subcontractor may submit it directly to the ACO and auditor cognizant of the subcontractor, notifying the contractor or higher tier subcontractor. A preaward determination of adequacy is not required in such cases. Instead, the ACO cognizant of the subcontractor shall

(i) Notify the auditor that the adequacy review will be performed during the postaward compliance review and, upon completion,

(ii) Notify the subcontractor, the contractor or higher tier subcontractor, and the cognizant ACOs of the findings.

(2) Even though a Disclosure Statement is not required, a subcontractor may

(i) Claim that CAS-related reviews by contractors or higher tier subcontractors would reveal proprietary data or jeopardize the subcontractor's competitive position and

(ii) Request that the Government perform the required reviews.

(d) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall make such recommendation to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACOs cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

9903.202–9 Illustration of Disclosure Statement Form, CASB–DS–1.

The data which are required to be disclosed are set forth in detail in the Disclosure Statement Form, CASB–DS–1, which is illustrated below:

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0348-0051

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FORM CASB DS-1 (REV 2/96)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	GENERAL INSTRUCTIONS

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the contractor and its contract cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 Of Title 48 CFR (48 CFR 9903.202).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segment, Corporate or other intermediate level home office, or a business unit). Parts II through VII pertain to the types of costs generally incurred by the segment or business unit directly performing Federal contracts or similar cost objectives. Part VIII pertains to the types of costs that are generally incurred by a Home office and are allocated to one or more segments performing Federal contracts. For a definition of the term "home office", see 48 CFR 9904.403.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VII.

4. Each home office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing Federal contracts or similar cost objectives shall complete the Cover Sheet, the Certification, Part I and Part VIII of the Disclosure Statement. Where a home office either establishes practices or procedures for the types of costs covered by Parts V, VI and VII,or incurs and then allocates these types of cost to its segments, the home office may complete Parts V, VI and VII to be included in the Disclosure Statement submitted by its segments. While a home office may have more than one segment submitting Disclosure Statements, only one Statement needs to be submitted to cover the home office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

8. Where the cost accounting practice being disclosed is clearly set forth in the contractor's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by reference at the option of the contractor. In such cases, the contractor should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement number and follow the page number specified in paragraph 7. Any supplementary comments needed to adequately describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when cost accounting practices are changed to comply with a new CAS or when practices are changed with or without knowledge of the Government (Also see 48 CFR 9903.202-3).

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	GENERAL INSTRUCTIONS

10. Amendments shall be submitted to the same offices to which submission would have been made were an original Disclosure Statement filed.

11. Each amendment, or set of amendments should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ____" and "Effective Date _____" in the Item Description block; and, insert a revision mark (e.g., "R") in the right hand margin of any line that is revised. Completely resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

12. Use of this Disclosure Statement, amended February 1996, shall be phased in as follows:

A. New Contractors. This form shall be used by new contractors when they are initially required to disclose their cost accounting practices pursuant to 9903.202-1.

B. Existing Contractors. If a contractor has disclosed its cost accounting practices on a prior edition of the Disclosure Statement (CASB DS-1), such disclosure shall remain in effect until the contractor amends or revises a significant portion of the Disclosure Statement in accordance with CAS 9903.202-3. Minor amendments to an existing DS-1 may continue to be made using the prior form. However, when a substantive change is made, a complete Disclosure Statement must be filed using this form. In any event, all contractors and subcontractors must submit a new Disclosure Statement (this version of the CASB DS-1) not later than the beginning of the contractor's next full fiscal year after December 31, 1998.

ATTACHMENT - Blank Continuation Sheet

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	CONTINUATION SHEET NAME OF REPORTING UNIT

Item No.	Item description

FORM CASB DS-1 (REV 2/96)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	COVER SHEET AND CERTIFICATION

0.1 Company or Reporting Unit.

Name

Street Address

City, State, & Zip Code

Division or Subsidiary of (if applicable)

0.2 Reporting Unit: (Mark one.)

A. _____ Business Unit comprising an entire business organization which is not divided into segments.
B.1. _____ Corporate Home Office
2. _____ Intermediate Level Home Office
3. _____ Segment or business unit reporting directly to a home office.

0.3 Official to Contact Concerning this Statement.

Name and Title

Phone number (including area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)
(a)_____ Original Statement
(b)_____ Revised Statement; Revision No._____

B. Effective Date of this Statement/Revision:_____

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

(a) Cognizant Federal Agency: _____
(b) Cognizant Federal Auditor:_____

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a revision, is the complete and accurate disclosure as of the above date by the above-named organization of its cost accounting practices, as required by the Disclosure Regulation (48 CFR 9903.202) of the Cost Accounting Standards Board under P.L. 100-679.

_____
(Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. § 1001

FORM CASB DS-1 (REV 2/96) C - 1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item description
	Part I Instructions Sales data for this part should cover the most recently completed fiscal year of the reporting unit. "Government CAS Covered Sales" includes sales under both prime contracts and subcontracts. "Annual CAS Covered Sales" includes intracorporate transactions.
1.1.0	Type of Business Entity of Which the Reporting Unit is a Part. (Mark one.) A. ____ Corporation B. ____ Partnership C. ____ Proprietorship D. ____ Not-for-profit organization E. ____ Joint Venture F. ____ Federally Funded Research and Development Center (FFRDC) Y. ____ Other (Specify) _____
1.2.0	Predominant Type of Government Sales. (Mark one.) 1/ A. ____ Manufacturing B. ____ Research and Development C. ____ Construction D. ____ Services Y. ____ Other (Specify)_____
1.3.0	Annual CAS Covered Government Sales as Percentage of Total Sales (Government and Commercial). (Mark one. An estimate is permitted for this section.) 1/ A. ____ Less than 10% B. ____ 10%-50% C. ____ 51%-80% D. ____ 81% - 95% E. ____ Over 95%
1.4.0	Description of Your Cost Accounting System for Government Contracts and Subcontracts. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) 1/ A. ____ Standard costs - Job order B. ____ Standard costs - Process C. ____ Actual costs - Job order D. ____ Actual costs - Process Y. ____ Other(s) 2/ 1/ Do not complete when Part I is filed in conjunction with Part VIII. 2/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item description
1.5.0	Identification of Differences Between Contract Cost Accounting and Financial Accounting Records. List on a continuation sheet, the types of costs charged to Federal contracts that are supported by memorandum records and identify the method used to reconcile with the entity's financial accounting records.
1.6.0	Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federal awards are identified as follows: (Mark all that apply and if more than one is marked, describe on a continuation sheet the major cost groupings, organizations, or other criteria for using each marked technique.)
1.6.1	Incurred costs. A. ____ Specifically identified and recorded separately in the formal financial accounting records. B. ____ Identified in separately maintained accounting records or workpapers. C. ____ Identifiable through use of less formal accounting techniques that permit audit verification. D. ____ Determinable by other means. 1/
1.6.2	Estimated costs. A. _____ By designation and description (in backup data, workpapers, etc) which have specifically been identified and recognized in making estimates. B. _____ By description of any other estimating technique employed to provide appropriate recognition of any unallowable amounts pertinent to the estimates. C. _____ Other. 1/
1.7.0	Fiscal Year: _____ (Specify twelve month period used for financial accounting and reporting purposes, e.g., 1/1 to 12/31.)
1.7.1	Cost Accounting Period: _____ (Specify period. If the cost accounting period used for the accumulation and reporting of costs under Federal contracts is other than the fiscal year identified in Item 1.7.0, explain circumstances on a continuation sheet.) 1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) I - 2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
	Part II Instructions This part covers the three major categories of direct costs, i.e., Direct Material, Direct Labor, and Other Direct Costs. It is not the intent here to spell out or define the three elements of direct costs. Rather, each contractor should disclose practices based on its own definitions of what costs are, or will be, charged directly to Federal contracts or similar cost objectives as Direct Material, Direct Labor, or Other Direct Costs. For example, a contractor may charge or classify purchased labor of a direct nature as "Direct Material" for purposes of pricing proposals, requests for progress payments, claims for cost reimbursement, etc.; some other contractor may classify the same cost as "Direct Labor," and still another as "Other Direct Costs." In these circumstances, it is expected that each contractor will disclose practices consistent with its own classifications of Direct Material, Direct Labor, and Other Direct Costs.
2.1.0	Description of Direct Material. Direct material as used here is not limited to those items of material actually incorporated into the end product; they also include material, consumable supplies, and other costs when charged to Federal contracts or similar cost objectives as Direct Material. (Describe on a continuation sheet the principal classes or types of material and services which are charged as direct material; group the material and service costs by those which are incorporated in an end product and those which are not.)
2.2.0	Method of Charging Direct Material.
2.2.1	Direct Charge Not Through an Inventory Account at: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Standard costs (Describe the type of standards used.) 1/ B. ____ Actual Costs Y. ____ Other(s) 1/ Z. ____ Not applicable
2.2.2	Charged Direct from a Contractor-owned Inventory Account at: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Standard costs 1/ B. ____ Average Costs 1/ C. ____ First in, first out D. ____ Last in, first out Y. ____ Other(s) 1/ Z. ____ Not applicable 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
2.3.0	Timing of Charging Direct Material. (Mark the appropriate line(s) to indicate the point in time at which direct material are charged to Federal contracts or similar cost objectives, and if more than one line is marked, explain on a continuation sheet.) A. ____ When orders are placed B. ____ When both the material and invoice are received C. ____ When material is issued or released to a process, batch, or similar intermediate cost objective D. ____ When material is issued or released to a final cost objective E. ____ When invoices are paid Y. ____ Other(s) 1/ Z. ____ Not applicable
2.4.0	Variances from Standard Costs for Direct Material. (Do not complete this item unless you use a standard cost method, i.e., you have marked Line A of Item 2.2.1, or 2.2.2. Mark the appropriate line(s) in Items 2.4.1, 2.4.2, and 2.4.4, and if more than one line is marked, explain on a continuation sheet.)
2.4.1	Type of Variance. A. ____ Price B. ____ Usage C. ____ Combined (A and B) Y. ____ Other(s) 1/
2.4.2	Level of Production Unit used to Accumulate Variance. Indicate which level of production unit is used as a basis for accumulating material variances. A. ____ Plant-wide Basis B. ____ By Department C. ____ By Product or Product Line Y. ____ Other(s) 1/
2.4.3	Method of Disposing of Variance. Describe on a continuation sheet the basis for, and the frequency of, the disposition of the variance.
2.4.4	Revisions. Standard costs for direct materials are revised: A. ____ Semiannually B. ____ Annually C. ____ Revised as needed, but at least once annually Y. ____ Other(s) 1/
	1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) II - 2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
2.5.0	Method of Charging Direct Labor: (Mark the appropriate line(s) for each Direct Labor Category to show how such labor is charged to Federal contracts or similar cost objectives, and if more than one line is marked, explain on a continuation sheet. Also describe on a continuation sheet the principal classes of labor rates that are, or will be applied to Manufacturing Labor, Engineering Labor, and Other Direct Labor, in order to develop direct labor costs.

	Direct Labor Category		
	Manufacturing	Engineering	Other Direct
A. Individual/actual rates	____	____	____
B. Average rates – uncompensated overtime hours included in computation 1/	____	____	____
C. Average rates – uncompensated overtime hours excluded from computation	____	____	____
D. Standard costs/rates 1/	____	____	____
Y. Other(s) 1/	____	____	____
Z. Labor category is not applicable	____	____	____

2.6.0 Variances from Standard Costs for Direct Labor. (Do not complete this item unless you use a standard costs/rate method, i.e., you have marked Line D of Item 2.5.0 for any direct labor category. Mark the appropriate line(s) in each column of Items 2.6.1, 2.6.2, and 2.6.4. If more than one is marked, explain on a continuation sheet.)

2.6.1 Type of Variance.

	Direct Labor Category		
	Manufacturing	Engineering	Other Direct
A. Rate	____	____	____
B. Efficiency	____	____	____
C. Combined (A and B)	____	____	____
Y. Other(s) 1/	____	____	____
Z. Labor category is not applicable	____	____	____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART II - DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
2.6.2	Level of Production Unit used to Accumulate Variance. Indicate which level of production unit is used as a basis for accumulating the labor variances.

	Direct Labor Category		
	Manufacturing	Engineering	Other Direct
A. Plant-wide basis	____	____	____
B. By department	____	____	____
C. By product or product line	____	____	____
Y. Other(s) 1/	____	____	____
Z. Labor category is not applicable	____	____	____

2.6.3 Method of Disposing of Variance. Describe on a continuation sheet the basis for, and the frequency of, the disposition of the variance.

2.6.4 Revisions. Standard costs for direct labor are revised:

A. ____ Semiannually
B. ____ Annually
C. ____ Revised as needed, but at least once annually
Y. ____ Other(s) 1/

2.7.0 Description of Other Direct Costs. Other significant items of cost directly identified with Federal contracts or other final cost objectives. Describe on a continuation sheet the principal classes of other costs that are always charged directly, that is, identified specifically with final cost objectives, e.g., fringe benefits, travel costs, services, subcontracts, etc.

2.7.1 When Employee Travel Expenses for lodging and subsistence are charged direct to Federal contracts or similar cost objectives the charge is based on:

A. ____ Actual Costs
B. ____ Per Diem Rates
C. ____ Lodging at actual costs and subsistence at per diem
Y. ____ Other Method 1/
Z. ____ Not Applicable

2.8.0 Credits to Contract Costs. When Federal contracts or similar cost objectives are credited for the following circumstances, are the rates of direct labor, direct materials, other direct costs and applicable indirect costs always the same as those for the original charges? (Mark one line for each circumstance, and for each "No" answer, explain on a continuation sheet how the credit differs from the original charge.)

Circumstance	A. Yes	B. No	Z. Not Applicable
(a) Transfers to other jobs/contracts	____	____	____
(b) Unused or excess materials remaining upon completion of contract	____	____	____

1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) II - 4

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART III - DIRECT VS. INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
3.1.0	Criteria for Determining How Costs are Charged to Federal Contracts Or Similar Cost Objectives. Describe on a continuation sheet your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives.
3.2.0	Treatment of Costs of Specified Functions, Elements of Cost, or Transactions. (For each of the functions, elements of cost or transactions listed in Items 3.2.1, 3.2.2, and 3.2.3, enter one of the Codes A through F, or Y, to indicate how the item is treated. Enter Code Z in those lines that are not applicable to you. Also, specify the name(s) of the indirect pool(s) (as listed in 4.1.0, 4.2.0 and 4.3.0) for each function, element of cost, or transaction coded E or F. If Code E, Sometimes direct/Sometimes indirect, is used, explain on a continuation sheet the circumstances under which both direct and indirect allocations are made.)

Treatment Code

A. Direct material	E. Sometimes direct/Sometimes indirect
B. Direct labor	F. Indirect only
C. Direct material and labor	Y. Other(s) 1/
D. Other direct costs	Z. Not applicable

3.2.1

Functions, Elements of Cost, or Transactions Related to Direct Material	Treatment Code	Name of Pool(s)
(a) Cash Discounts on Purchases	___	_____
(b) Freight in	___	_____
(c) Income from Sale of Scrap	___	_____
(d) Income from Sale of Salvage	___	_____
(e) Incoming Material Inspection (receiving)	___	_____
(f) Inventory adjustment	___	_____
(g) Purchasing	___	_____
(h) Trade Discounts, Refunds, Rebates, and Allowances on Purchases	___	_____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART III - DIRECT VS. INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description		
3.2.2	Functions, Elements of Cost, or Transactions Related to Direct Labor	Treatment Code	Name of Pool(s)
	(a) Incentive Compensation	___	_____
	(b) Holiday Differential (Priemium Pay)	___	_____
	(c) Vacation Pay	___	_____
	(d) Overtime Premium Pay	___	_____
	(e) Shift Premium Pay	___	_____
	(f) Pension Costs	___	_____
	(g) Post Retirement Benefits Other Than Pensions	___	_____
	(h) Health Insurance	___	_____
	(i) Life Insurance	___	_____
	(j) Other Deferred Compensation 1/	___	_____
	(k) Training	___	_____
	(l) Sick Leave	___	_____
	1/ Describe on a Continuation Sheet.		

FORM CASB DS-1 (REV 2/96) III - 2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART III - DIRECT VS. INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description			
3.2.3	Functions, Elements of Cost, or Transactions - Miscellaneous		Treatment Code	Name of Pool(s)
	(a)	Design Engineering (in-house)	___	_____
	(b)	Drafting (in-house)	___	_____
	(c)	Computer Operations (in-house)	___	_____
	(d)	Contract Administration	___	_____
	(e)	Subcontract Administration Costs	___	_____
	(f)	Freight Out (finished product)	___	_____
	(g)	Line (or production) Inspection	___	_____
	(h)	Packaging and Preservation	___	_____
	(i)	Preproduction Costs and Start-up Costs	___	_____
	(j)	Departmental Supervision	___	_____
	(k)	Professional Services (consultant fees)	___	_____
	(l)	Purchased Labor of Direct Nature (on premises)	___	_____
	(m)	Purchased Labor of Direct Nature (off premises)	___	_____
	(n)	Rearrangement Costs	___	_____
	(o)	Rework Costs	___	_____
	(p)	Royalties	___	_____
	(q)	Scrap Work	___	_____
	(r)	Special Test Equipment	___	_____
	(s)	Special Tooling	___	_____
	(t)	Warranty Costs	___	_____
	(u)	Rental Costs	___	_____
	(v)	Travel and Subsistence	___	_____
	(w)	Employee Severance Pay	___	_____
	(x)	Security Guards	___	_____

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description

Part IV Instructions

For the purpose of this part, indirect costs have been divided into three categories: (i) manufacturing, engineering, and comparable indirect costs, (ii) general and administrative (G&A) expenses, and (iii) service center and expense pool costs, as defined in Item 4.3.0. The term "overhead," as used in this part, refers only to the first category of indirect costs.

The following Allocation Base Codes are provided for use in connection with Items 4.1.0, 4.2.0 and 4.3.0.

A.	Sales	H.	Direct labor dollars
B.	Cost of sales	I.	Direct labor hours
C.	Total Cost input (direct material, direct labor, other direct costs and applicable overhead)	J.	Machine hours
		K.	Usage
		L.	Unit of production
D.	Value-added cost input (total cost input less direct material and subcontract costs)	M.	Direct material cost
		N.	Total payroll dollars (direct and indirect employees)
E.	Total cost incurred (total cost input plus G&A expenses)	O.	Headcount or number of employees (direct and indirect employees)
F.	Prime cost (direct material, direct labor and other direct cost)	P.	Square feet
		Y.	Other(s), or more than one basis (Describe on a continuation sheet.)
G.	Processing or conversion cost (direct labor and applicable overhead)	Z.	Pool not applicable

4.1.0 Overhead Pools. List all the overhead pools, i.e., pools of indirect costs, other than general and administrative (G&A) expenses, that are allocated to final cost objectives without any intermediate allocations. A segment or business unit may have only a single pool encompassing all of its overhead costs or alternatively it may have several pools such as manufacturing overhead, engineering overhead, material handling overhead, etc. For each pool listed indicate the base used for allocating such pooled expenses to Federal contracts or similar cost objectives. Also, for each of the pools indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base. Use a continuation sheet if additional space is required.

Allocation Base Code

1. _____ ____

(a) Major functions, activities, and elements of cost included:

_____

_____

(b) Description/Make up of the allocation base:

_____

_____

FORM CASB DS-1 (REV 2/96) IV - 1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
4.1.0	Continued. Allocation Base Code 2. _____ ____ (a) Major functions, activities, and elements of cost included: _____ _____ (b) Description/Make up of the allocation base: _____ _____
4.2.0	General and Administrative (G&A) Expense Pool(s). Select among the three categories of pools below that describe(s) the manner in which G&A expenses are allocated. For each category of pool(s) selected indicate the base(s) used for allocating such pooled expenses to Federal contracts or similar cost objectives. Also, for each category of pool(s) selected, indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base(s). For example, if direct labor dollars are used, are fringe benefits included? If a total cost input base is used, is the imputed cost of capital included? Use a continuation sheet if additional space is required. Allocation Base Code Single Pool Containing G&A Expenses Only _____ ____ (a) Major functions, activities, and elements of cost included: _____ _____ (b) Description/Make up of the allocation base: _____ _____

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description	
4.2.0	Continued.	
	Single Pool Containing Both G&A and Non-G&A Expenses	Allocation Base Code
	_____	____
	(a) Major functions, activities, and elements of cost included: _____ _____	
	(b) Description/Make up of the allocation base: _____ _____	
	Special Allocations	Allocation Base Code
	1. _____	____
	(a) Major functions, activities, and elements of cost included: _____ _____	
	(b) Description/Make up of the allocation base: _____ _____	
	2. _____	____
	(a) Major functions, activities, and elements of cost included: _____ _____	
	(b) Description/Make up of the allocation base: _____ _____	

IV - 3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
4.3.0	**Service Center and Expense Pool Allocation Bases.**

Service centers are departments or other functional units which perform specific technical and/or administrative services primarily for the benefit of other units within a reporting unit. Expense pools are pools of indirect costs that are allocated primarily to other units within a reporting unit. Examples of service centers are data processing centers, reproduction services and communications services. Examples of expense pools are use and occupancy pools and fringe benefit pools.

Category Code

Generally, costs incurred by such centers or pools are, or can be, charged or allocated (i) partially to specific final cost objectives as direct costs and partially to other indirect cost pools (such as a manufacturing overhead pool) for subsequent reallocation to several final cost objectives, referred to herein as Category "A", and (ii) only to several other indirect cost pools (such as a manufacturing overhead pool, engineering overhead pool and G&A expense pool) for subsequent reallocation to several final cost objectives, referred to herein as Category "B".

Rate Code

Some service centers or expense pools may use predetermined billing or costing rates to charge or allocate the costs (Rate Code A) while others may charge or allocate on an actual basis (Rate Code B).

List all the service centers and expense pools and enter in column (1) Code A or B to indicate the category of pool. Enter in Column (2) one of the Allocation Base Codes A through P, or Y, listed on Page ___, to indicate the base used for charging or allocating service center or expense pool costs. Enter in Column (3) Rate Code A or B to describe the costing method used. Also, for each of the centers and pools indicate (a) the major functions, activities, and elements of cost included, and (b) the make up of the allocation base. Use a continuation sheet if additional space is required.

	Service Center or Expense Pool	Category Code (1)	Allocation Base Code (2)	Rate Code (3)
1.	_____	___	___	___
	(a) Major functions, activities, and elements of cost included: _____ _____			
	(b) Description/Make up of the allocation base: _____ _____			
2.	_____	___	___	___
	(a) Major functions, activities, and elements of cost included: _____ _____			
	(b) Description/Make up of the allocation base: _____ _____			

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
4.4.0	Treatment of Variances from Actual Cost (Underabsorption or Overabsorption). Where predetermined billing or costing rates are used to charge costs of service centers and expense pools to Federal contracts or other indirect cost pools (Rate Code A in Column (3) of Item 4.3.0), variances from actual costs are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Prorated to users on the basis of charges made, at least once annually B. ____ All charged or credited to indirect cost pool(s) at least once annually Y. ____ Other(s) 1/ Z. ____ Service center is not applicable to reporting unit
4.5.0	Application of Overhead and G&A Rates to Specified Transactions or Costs. This item is directed to ascertaining your practice in special situations where, in lieu of establishing a separate indirect cost pool, allocation is made from an established overhead or G&A pool at a rate other than the normal full rate for that pool. In the case of such a special allocation, the terms "less than full rate" or "more than full rate" should be used to describe the practice. The terms do not apply to situations where, as in some cases of off-site activities, etc., a separate indirect cost pool and base are used and the rate for such activities is lower than the "in-house" rate. For each of the transactions or costs listed below, enter one of the following codes to indicate your indirect cost allocation practice with respect to that transaction or cost. If Code A, full rate, is entered, identify on a continuation sheet the pool(s) reported under items 4.1.0, 4.2.0, and 4.3.0, which are applicable. If Codes B or C, less than or more than the full rate, is entered, describe on a continuation sheet the major types of expenses that are covered by such a rate. Rate Code A. Full rate B. Special allocation at less than full rate C. Special allocation at more than full rate D. No overhead or G&A is applied Z. Transaction or cost is not applicable to reporting unit Transaction or Cost to Which Indirect Costs May be Allocated — Rate Code (a) Subcontract costs ____ (b) Purchased Labor ____ (c) Government-furnished materials ____ (d) Self-constructed depreciable assets ____ (e) Labor on installation of assets ____ (f) Off-site work ____ (g) Interorganizational transfers out ____ (h) Interorganizational transfers in (Also indicate on a continuation sheet the basis used by you as transferee to charge the cost or price of interogranizational transfers to Federal contracts or similar cost objectives. If the charge is based on cost, indicate whether the transferor's G&A expenses are included.) ____ (i) Other transactions or costs (Enter Code B or C on this line if there are other transactions or costs to which either less than full rate or more than full rate is applied. List such transactions or costs on a continuation sheet, and for each describe the major types of expenses covered by such a rate. If there are no other such transactions or costs, enter code Z.) ____ 1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) IV - 5

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART IV - INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item description
4.6.0	Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs. Definitions of and requirements for the allocation of IR&D and B&P costs are contained in 48 CFR 9904.420. The full rate of all allocable manufacturing, engineering, and/or other overhead is applied to IR&D and B&P costs as if IR&D and B&P projects were under contract, and the "burdened" IR&D and B&P costs are: (Mark appropriate line(s).) A. ____ Allocated to Federal contracts or similar cost objectives by means of a composite pool with G&A expenses. B. ____ Allocated to Federal contracts or similar cost objectives by means of a separate pool. C. ____ Transferred to the corporate or home office level for reallocation to the benefiting segments. Y. ____ Other 1/ Z. ____ Not applicable
4.7.0	Cost of Capital Committed to Facilities. In accordance with instructions for Form CASB-CMF, undistributed facilities capital items are allocated to overhead and G&A expense pools: (Mark one.) A. ____ On a basis identical to that used to absorb the actual depreciation or amortization from these facilities; land is assigned in the same manner as the facilities to which it relates. B. ____ On a basis not identical to that used to absorb the actual depreciation or amortization from these facilities. (Describe on a continuation sheet the difference for each step of the allocation process.) C. ____ By the "alternative allocation process" described in instructions for Form CASB-CMF. Z. ____ Not applicable. 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES NAME OF REPORTING UNIT

Item No.	Item description
	Part V Instructions Where a home office either establishes practices or procedures for the types of costs covered in this Part or incurs and then allocates these costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (i) 4., General Instructions.
5.1.0	Depreciating Tangible Assets for Government Contract Costing. (For each of the asset categories listed on Page ___, enter a code from A through H in Column (1) describing the method of depreciation (Code F for assets that are expensed); a code from A through C in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use charges are applied to property units; and a Code A, B or C in Column (4) indicating whether or not residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.) Column (1)–Depreciation Method Code A. Straight Line B. Declining balance C. Sum-of-the years digits D. Machine hours E. Unit of production F. Expensed at acquisition G. Use charge H. Method of depreciation used under the applicable Internal Revenue Procedures Y. Other or more than one method 1/ Z. Asset category is not applicable Column (2)–Useful Life Code A. Replacement experience adjusted by expected changes in periods of usefulness B. Term of Lease C. Estimated on the basis of Asset Guidelines under Internal Revenue Procedures Y. Other, or more than one method 1/ Column (3)–Property Units Code A. Individual units are accounted for separately B. Applied to groups of assets with similar service lives C. Applied to groups of assets with varying service lives Y. Other or more than one method 1/ Column (4)–Residual Value Code A. Residual value is estimated and deducted B. Residual value is covered by the depreciation method (e.g., declining balance) C. Residual value is estimated but not deducted in accordance with the provisions of 48 CFR 9904.409 1/ Y. Other or more than one method 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) V - 1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES NAME OF REPORTING UNIT

Item No.	Item description
5.1.0	Continued.

Asset Category	Depreciation Method Code (1)	Useful Life Code (2)	Property Units Code (3)	Residual Value Code (4)
(a) Land improvements	___	___	___	___
(b) Building	___	___	___	___
(c) Building improvements	___	___	___	___
(d) Leasehold improvements	___	___	___	___
(e) Machinery and equipment	___	___	___	___
(f) Furniture and fixtures	___	___	___	___
(g) Automobiles and trucks	___	___	___	___
(h) Data processing equipment	___	___	___	___
(i) Programming/reprogramming costs	___	___	___	___
(j) Patterns and dies	___	___	___	___
(k) Tools	___	___	___	___
(l) Other depreciable asset categories (Enter Code Y on this line if other asset categories are used and enumerate on a continuation sheet each such asset category and the applicable codes. Otherwise enter Code Z.)	___	___	___	___

5.2.0 Depreciation Practices for Costing, Financial Accounting, and Income Tax. Are depreciation practices the same for costing Federal contracts as for financial accounting and income tax? (Mark either (A) or (B) on each line under Financial Accounting and Income Tax. Not-for-profit organizations need not complete this item.)

Financial Accounting	A. Yes	B. No
(a) Methods	___	___
(b) Useful lives	___	___
(c) Property units	___	___
(d) Residual values	___	___

Income Tax	A. Yes	B. No
(e) Methods	___	___
(f) Useful lives	___	___
(g) Property units	___	___
(h) Residual values	___	___

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES NAME OF REPORTING UNIT

Item No.	Item description
5.3.0	Fully Depreciated Assets. Is a usage charge for fully depreciated assets charged to Federal contracts? (Mark one.) A. ____ Yes 1/ B. ____ No Z. ____ Not applicable
5.4.0	Treatment of Gains and Losses on Disposition of Depreciable Property. Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Credited or charged currently to the same overhead or G&A pools to which the depreciation of the assets was charged B. ____ Taken into consideration in the depreciation cost basis of the new items, where trade-in is involved C. ____ Not accounted for separately, but reflected in the depreciation reserve account Y. ____ Other(s) 1/ Z. ____ Not applicable
5.5.0	Capitalization or Expensing of Specified Costs. (Mark one line on each item to indicate your practices regarding capitalization or expensing of specified costs incurred in connection with capital assets. If the same specified cost is sometimes expensed and sometimes capitalized, mark both lines and describe on a continuation sheet the circumstances when each method is used.) Cost — A. Expensed — B. Capitalized (a) Freight-in ____ ____ (b) Sales taxes ____ ____ (c) Excise taxes ____ ____ (d) Architect-engineer fees ____ ____ (e) Overhauls (extraordinary repairs) ____ ____ 1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) V - 3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART V - DEPRECIATION AND CAPITALIZATION PRACTICES NAME OF REPORTING UNIT

Item No.	Item description
5.6.0	Criteria for Capitalization. Enter (a) the minimum dollar amount of acquisition cost or expenditures for addition, alteration and improvement of depreciable assets capitalized, and (b) the minimum number of expected life years of capitalized assets. If more than one dollar amount or number applies, show the information for the majority of your depreciable assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differ from those for the majority of assets. (a) Minimum dollar amount capitalized _____ (b) Minimum service life years _____
5.7.0	Group or Mass Purchase. Are group or mass purchases (original complement) of low cost equipment, which individually are less than the capitalization amount indicated above, capitalized? (Mark one. If Yes is marked, provide the minimum aggregate dollar amount capitalized.) A. ____ Yes _____Minimum aggregate dollar amount capitalized B. ____ No

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VI - OTHER COSTS AND CREDITS NAME OF REPORTING UNIT

Item No.	Item description			
	Part VI Instructions			
	Where a home office either establishes practices or procedures for the types of costs covered in this Part or incurs and then allocates these costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (ii) 4., General Instructions.			
6.1.0	Method of Charging and Crediting Vacation, Holiday, and Sick Pay. (Mark the appropriate line(s) in each column of Items 6.1.1, 6.1.2, 6.1.3 and 6.1.4 to indicate the method used to charge, or credit any unused or unpaid vacation, holiday, or sick pay. If more than one method is marked, explain on a continuation sheet.)			
			Salaried	
6.1.1	Charges for Vacation Pay	Hourly (1)	Non-exempt 1/ (2)	Exempt 1/ (3)
	A. When Accrued (earned)	___	___	___
	B. When Taken	___	___	___
	Y. Other(s) 2/	___	___	___
6.1.2	Charges for Holiday Pay			
	A. When Accrued (earned)	___	___	___
	B. When Taken	___	___	___
	Y. Other(s) 2/	___	___	___
6.1.3	Charges for Sick Pay			
	A. When Accrued (earned)	___	___	___
	B. When Taken	___	___	___
	Y. Other(s) 2/	___	___	___
6.1.4	Credits for Unused or Unpaid Vacation, Holiday, or Sick Pay			
	A. Credited to Accounts Originally charged at Least Once Annually	___	___	___
	B. Credited to Indirect Cost Pools at Least Once Annually	___	___	___
	C. Carried Over to Future Cost Accounting Periods 2/	___	___	___
	Y. Other(s) 2/	___	___	___
	Z. Not Applicable	___	___	___
	1/ For the definition of Non-exempt and Exempt salaries, see the Fair Labor Standards Act, 29 U.S.C. 206.			
	2/ Describe on a Continuation Sheet.			

FORM CASB DS-1 (REV 2/96) VI - 1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VI - OTHER COSTS AND CREDITS NAME OF REPORTING UNIT

Item No.	Item description
6.2.0	Supplemental Unemployment (Extended Layoff) Benefit Plans. Costs of such plans are charged to Federal contracts: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ___ When actual payments are made directly to employees B. ___ When accrued (book accrual or funds set aside but no trust fund involved) C. ___ When contributions are made to a nonforfeitable trust fund D. ___ Not charged Y. ___ Other(s) 1/ Z. ___ Not applicable
6.3.0	Severance Pay and Early Retirement. Costs of normal turnover severance pay and early retirement incentive plans, as defined in FAR 31.2 or other pertinent procurement regulations, which are charged directly or indirectly to Federal contracts, are based on: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ___ Actual payments made B. ___ Accrued amounts on the basis of past experience C. ___ Not charged Y. ___ Other(s) 1/ Z. ___ Not applicable
6.4.0	Incidental Receipts. (Mark the appropriate line(s) to indicate the method used to account for incidental or miscellaneous receipts, such as revenues from renting real and personal property or selling services, when related costs have been allocated to Federal contracts. If more than one is marked, explain on a continuation sheet.) A. ___ The entire amount of the receipt is credited to the same indirect cost pools to which related costs have been charged B. ___ Where the amount of the receipt includes an allowance for profit, the cost-related part of the receipt is credited to the same indirect cost pools to which related costs have been charged; the profits are credited to Other (Miscellaneous) Income C. ___ The entire amount of the receipt is credited directly to Other (Miscellaneous) Income Y. ___ Other(s) 1/ Z. ___ Not applicable 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VI - OTHER COSTS AND CREDITS NAME OF REPORTING UNIT

Item No.	Item description
6.5.0	Proceeds from Employee Welfare Activities. Employee welfare activities include all of those activities set forth in FAR 31.2 . (Mark the appropriate line(s) to indicate the practice followed in accounting for the proceeds from such activities. If more than one is marked, explain on a continuation sheet.) A. ____ Proceeds are turned over to an employee-welfare organization or fund; such proceeds are reduced by all applicable costs such as depreciation, heat, light and power B. ____ Same as above, except the proceeds are not reduced by all applicable costs C. ____ Proceeds are credited at least once annually to the appropriate cost pools to which costs have been charged D. ____ Proceeds are credited to Other (Miscellaneous) Income Y. ____ Other(s) 1/ Z. ____ Not applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) VI - 3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description

Part VII Instructions

This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits), certain other types of deferred compensation, and insurance. Some organizations may incur all of these costs at the corporate or home office level, while others may incur them at subordinate organizational levels. Still others may incur a portion of these costs at the corporate level and the balance at subordinate organizational levels.

Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs, and should require that entity to complete the applicable portions of this Part VII. Each such entity is to fully disclose the methods and techniques used to measure, assign, and allocate such costs to the segment(s) performing Federal contracts or similar cost objectives. Necessary explanations required to achieve that objective should be provided by the entity on a continuation sheet.

Where a home office either establishes practices or procedures for the types of costs covered in this Part VII or incurs and then allocates those costs to its segments, the home office may complete this Part to be included in the submission by the segment as indicated on page (i) 4., General Instructions.

7.1.0 Pension Plans with Costs Charged to Federal Contracts. Identify the types and number of pension plans whose costs are charged to Federal contracts or similar cost objectives: (Mark applicable line(s) and enter number of plans.)

Type of Pension Plan	Number of Plans
A. Defined-Contribution Plan (Other than ESOPs (see 7.5.0))	
1. Non-Qualified	____
2. Qualified	____
B. Defined-Benefit Plan	
1. Non-Qualified	
a. Costs are measured and assigned on accrual basis	____
b. Costs are measured and assigned on cash (pay-as-you-go) basis	____
2. Qualified	
a. Trusteed (Subject to ERISA's minimum funding requirements)	____
b. Fully-insured plan (Exempt from ERISA's minimum funding requirements) treated as a defined-contribution plan	____
c. Collectively bargained plan treated as a defined-contribution plan	____
Y. ____ Other 1/	____
Z. ____ Not Applicable (Proceed to Item 7.2.0)	

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.1.1	General Plan Information. On a continuation sheet for each plan identified in item 7.1.0, provide the following information: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Is there a funding agency established for the plan? E. Indicate where costs are accumulated: (1) Home Office (2) Segment F. If the plan provides supplemental benefits to any other plan, identify the other plan(s).
7.1.2	Defined-Contribution Plan(s) and Certain Defined-Benefit Plans treated as Defined-Contribution Plans. Where numerous plans are listed under 7.1.0.A., 7.1.0.B.2.b., or 7.1.0.B.2.c., for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or similar cost objectives, describe on a continuation sheet the basis for the contribution (including treatment of dividends, credits, and forfeitures) required for each fiscal year. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those defined-contribution plan costs allocable to this segment or business unit.) Z. ____ Not applicable. (Proceed to Item 7.1.3)
7.1.3	Defined-Benefit Plan(s). Where numerous plans are listed under 7.1.0.B. (excluding certain defined-benefit plans treated as defined-contribution plans reported under 7.1.0.B.2.b. and 7.1.0.B.2.c.), for those plans which represent the largest dollar amounts of costs charged to Federal contracts, provide the information requested below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those defined-benefit plan costs allocable to this segment or business unit.): A. Actuarial Cost Method. Identify the actuarial cost method used, including the cost method(s) used to value ancillary benefits, for each plan. Include the method used to determine the actuarial value of assets. Also, if applicable, include whether normal cost is developed as a level dollar amount or as a level percent of salary. For plans listed under 7.1.0.B.1.b., enter "pay-as-you-go". B. Actuarial Assumptions. Describe the events or conditions for which significant actuarial assumptions are made for each plan. Do not include the current numeric values of the assumptions, but provide a description of the basis used for determining these numeric values. Also, describe the criteria used to evaluate the validity of an actuarial assumption. For plans listed under 7.1.0.B.1.b., enter "not applicable". C. Market Value of Funding Agency Assets. Indicate if all assets of the funding agency are valued on the basis of a readily determinable market price. If yes, indicate the basis for the market value. If no, describe how the market values are determined for those assets that do not have a readily determinable market price. For plans listed under 7.1.0.B.1.b., enter "not applicable". D. Basis for Cost Computation. Indicate whether the cost for the segment is determined as: 1. An allocated portion of the total pension plan cost. 2. A separately computed pension cost for one or more segments. If so, identify these segments. Z. ____ Not applicable, proceed to Item 7.2.0.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.2.0	**Post-retirement Benefits (PRBs) Other than Pensions (including post-retirement health care benefits) Charged to Federal Contracts.** Identify the accounting method used to determine the costs and the number of PRB plans whose costs are charged to Federal contracts or similar cost objectives. Where retiree benefits are provided as an integral part of an employee group insurance plan that covers active employees, report that plan under 7.3.0. (Mark applicable line(s) and enter number of plans.) Method Used to Determine Costs — Number of Plans A. Accrual Accounting ____ B. Cash (pay-as-you-go) Accounting ____ C. Purchased Insurance from unrelated Insurer ____ D. Purchased Insurance from Captive Insurer ____ E. Self-Insurance (including insurance obtained through Captive Insurer) ____ F. Terminal Funding ____ Y. Other 1/ ____ Z. ____ Not Applicable (Proceed to Item 7.3.0)
7.2.1	General PRB Plan Information. On a continuation sheet for each plan identified in item 7.2.0, provide the following information grouped by method used to determine costs: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Is there a funding agency or funded reserve established for the plan? E. Indicate where costs are accumulated: (1) Home Office (2) Segment F. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe. G. If this PRB plan is listed under 7.2.0.C., 7.2.0.D., or 7.2.0.E., indicate whether the plan is operated as an employee group insurance program. If this PRB plan is listed under 7.2.0.Y., indicate whether the plan is operated as a group insurance program. If the plan is operated as an employee group insurance program, report this plan under 7.3.0. and 7.3.1., as appropriate. If no, report the plan under 7.2.2. 1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.2.2	PRB Plan(s). Where numerous plans are listed under 7.2.0, for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or other similar cost objectives, provide the information below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80 percent of those PRB costs allocable to this segment or business unit.) A. Actuarial Cost Method. Identify the actuarial cost method used for each plan or each benefit, as appropriate. Include the method used to determine the actuarial value of assets. Identify the amortization methods and periods used, if any. For plans listed under 7.2.0.B., enter "cash accounting". For plans listed under 7.2.0.F., enter "terminal funding" and identify the amortization methods and periods used, if any. B. Actuarial Assumptions. Describe the events or conditions for which significant actuarial assumptions are made for each plan. Do not include the current numeric values of the assumptions, but provide a description of the basis used for determining these numeric values. Also, describe the criteria used to evaluate the validity of an actuarial assumption. For plans under 7.2.0.B. or 7.2.0.F., enter "not applicable". C. Funding. Provide the following information on the funding practice for the costs of the plan: (For plans under 7.2.0.B. or 7.2.0.F., enter "not applicable".) 1. Describe the criteria for or practice of funding the measured and assigned cost; e.g., full funding of the accrual, funding is made pursuant to VEBA or 401(h) rules. 2. Briefly describe the funding arrangement. 3. Are all assets valued on the basis of a readily determinable market price? If yes, indicate the basis used for the market value. If no, describe how the market value is determined for those assets that are not valued on the basis of a readily determinable market price. D. Basis for Cost Computation. Indicate whether the cost for the segment is determined as: 1. An allocated portion of the total PRB plan cost 2. A separately computed PRB cost for one or more segments. If so, identify those segments. E. Forfeitability. Does each participant have a non-forfeitable contractual right to their benefit or account balance? If no, explain. Z. ____ Not applicable, proceed to item 7.3.0.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.3.0	Employee Group Insurance Charged to Federal Contracts or Similar Cost Objectives. Does your organization provide group insurance coverage to its employees? (Includes coverage for life, hospital, surgical, medical, disability, accident, and similar plans for both active and retired employees, even if the coverage was previously described in 7.2.0.) A. _____ Yes (Complete Item 7.3.1) B. _____ No (Proceed to Item 7.4.0)
7.3.1	Employee Group Insurance Programs. For each program that covers a category of insured risk (e.g., life, hospital, surgical, medical, disability, accident, and similar programs for both active and retired employees), provide the information below on a continuation sheet, using the codes described below: (If there are not more than three policies or self-insurance plans that comprise the program, provide information for all the policies and self-insurance plans. If there are more that three policies or self-insurance plans, information should be provided for those policies and self-insurance plans that in the aggregate account for at least 80 percent of the costs allocable to this segment or business unit for the program that covers each category of insured risk identified.) Description of Employee Group Insurance Program: _____

Policy or Self-Insurance Plan	Cost Accumulation (1)	Cost Basis (2)	Includes Retirees (3)	Purchased Insurance Rating Basis (4)	Self-Insurance: Projected Average Loss (5)	Self-Insurance: Insurance Administrative Expenses (6)

Column (1) – Cost Accumulation

Enter Code A, B, or Y, as appropriate.

A. Costs are accumulated at the Home Office.
B. Costs are accumulated at Segment
Y. Other 1/

Column (2) – Cost Basis

Enter code A, B, C, or Y, as appropriate.

A. Purchased Insurance from unrelated third party
B. Self-insurance
C. Purchased Insurance from a captive insurer
Y. Other 1/

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.3.1	Continued. Column (3) – Includes Retirees Enter code A, B, C, or Y, as appropriate. A. No, does not include benefits for retirees. B. Yes, PRB benefits for retirees that are a part of a policy or coverage for both active employees and retirees are reported here instead of 7.2.0. C. Yes, PRB benefits for retirees are a part of a PRB plan previously reported under 7.2.0. Y. Other 1/ Column (4) – Purchased Insurance Rating Basis For each plan listed enter code A, B, C, Y, or Z, as appropriate. A. Retrospective Rating (also called experience rating plan or retention plan). B. Manually Rated C. Community Rated Y. Other, or more than one type 1/ Z. Not applicable Column (5) – Projected Average Loss For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, Y, or Z, as appropriate. A. Self-insurance costs represent the projected average loss for the period estimated on the basis of the cost of comparable purchased insurance. B. Self-insurance costs are based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with accepted actuarial principles. C. Actual payments are considered to represent the projected average loss for the period. Y. Other, or more than one method 1/ Z. Not applicable Column (6) – Insurance Administration Expenses For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, D, Y, or Z, as appropriate, to indicate how administrative costs are treated. A. Separately identified and accumulated in indirect cost pool(s). B. Separately identified, accumulated, and allocated to cost objectives either at the segment and/or home office level (Describe allocation method on a Continuation Sheet). C. Not separately identified, but included in indirect cost pool(s). (Describe pool(s) on a Continuation Sheet) D. Incurred by an insurance carrier or third party (Describe accumulation and allocation process on a Continuation Sheet). Y. Other 1/ Z. Not applicable 1/ Describe on a Continuation Sheet.

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COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.4.0	Deferred Compensation, as defined in CAS 9904.415. Does your organization award deferred compensation, other than ESOPs, which is charged to Federal contracts or similar cost objectives? (Mark one.) A. ____ Yes (Complete Item 7.4.1.) B. ____ No (Proceed to Item 7.5.0.)
7.4.1	General Plan Information. On a continuation sheet for all deferred compensation plans, as defined by CAS 9904.415, provide the following information: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Indicate where costs are accumulated: (1) Home office (2) Segment E. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe .
7.4.2	Deferred Compensation Plans. Where numerous plans are listed under 7.4.1, for those plans which represent the largest dollar amounts of costs charged to Federal contracts, or other similar cost objectives, provide the information below on a continuation sheet. (If there are not more than three plans, provide information for all the plans. If there are more than three plans, information should be provided for those plans that in the aggregate account for at least 80% of these deferred compensation costs allocable to this segment or business unit): A. Description of Plan. 1. Stock Options 2. Stock Appreciation Rights 3. Cash Incentive 4. Other (explain) B. Method of Charging Costs to Federal Contracts or Similar Cost Objectives. 1. Costs charged when accrued and the accrual is fully funded 2. Costs charged when accrued and the accrual is partially funded or not funded 3. Costs charged when paid to employee (pay-as-you-go) 4. Other (explain)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.5.0	Employee Stock Ownership Plans (ESOPs). Does your organization make contributions to fund ESOPs that are charged directly or indirectly to Federal contracts or similar cost objectives? (Mark one) A. ____ Yes (Proceed to Item 7.5.1) B. ____ No (Proceed to Item 7.6.0)
7.5.1	General Plan Information. On a continuation sheet, for all ESOPs provide the following information: A. The plan name B. The Employer Identification Number (EIN) of the plan sponsor as reported on IRS Form 5500, if any C. The plan number as reported on IRS Form 5500, if any D. Indicate where costs are accumulated: (1) Home office (2) Segment E. Are benefits provided pursuant to a written plan or an established practice? If established practice, briefly describe. F. Indicate whether the ESOP plan is a defined-contribution plan subject to CAS 9904.412. (Answer Yes or No). G. Indicate whether the ESOP is leveraged or nonleveraged. H. Valuation of Stock or Non-Cash Assets. Are the plan assets valued on the basis of a readily determinable market price? If yes, indicate the basis for the market value. If no, indicate how the market value is determined for those assets that do not have a readily determinable market price. I. Forfeitures and Dividends. Describe the accounting treatment for forfeitures and dividends, on both allocated and unallocated shares, in the measurement of ESOP costs charged directly or indirectly to Federal contracts or similar cost objectives for each plan identified. J. Administrative Costs. Describe how the costs of administration of each plan listed are identified, grouped, and accumulated.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.6.0	Worker's Compensation, Liability, and Property Insurance. Does your organization have insurance coverage regarding worker's compensation, liability and property insurance? A. _____ Yes (Complete Item 7.6.1.) B. _____ No (Proceed to Part VIII)
7.6.1	Worker's Compensation, Liability and Property Insurance Coverage. For each line of insurance that covers a category of insured risk (e.g., worker's compensation, fire and similar perils, automobile liability and property damage, general liability), provide the information below on a continuation sheet using the codes described below: (If there are not more than three policies or self-insurance plans that are applicable to the line of insurance, provide information for all the policies and self-insurance plans. If there are more than three policies or insurance plans, information should be provided for those policies and self-insurance plans that in the aggregate account for at least 80 percent of the costs allocable to this segment or business unit for each line of insurance identified.) Description of Line of Insurance Coverage: _____

Policy or Self-Insurance Plan	Cost Accumulation (1)	Cost Basis (2)	Crediting of Dividends and Earned Refunds (3)	Self-Insurance: Projected Average Loss (4)	Self-Insurance: Insurance Administrative Expenses (5)

Column (1) – Cost Accumulation

Enter code A, B, or Y, as appropriate.

A. Costs are accumulated at the Home Office.
B. Costs are accumulated at Segment
Y. Other 1/

Column (2) – Cost Basis

Enter code A, B, C, or Y, as appropriate.

A. Purchased Insurance from unrelated third party
B. Self-insurance
C. Purchased Insurance from a captive insurer
Y. Other 1/

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VII - DEFERRED COMPENSATION AND INSURANCE COST NAME OF REPORTING UNIT

Item No.	Item description
7.6.1	Continued. Column (3) – Crediting of Dividends and Earned Refunds For each line of coverage listed, enter code A, B, C, D, E, Y, or Z, as appropriate. A. Credited directly or indirectly to Federal contracts or similar cost objectives in the year earned B. Credited directly or indirectly to Federal contracts or similar cost objectives in the year received, not necessarily in the year earned C. Accrued each year, as applicable, to currently reflect the net annual cost of the insurance D. Not credited or refunded to the contractor but retained by the carriers as reserves in accordance with 48 CFR 9904.416-50(a)(1)(iv) E. Manually Rated - not applicable Y. Other, or more than one 1/ Z. Not applicable Column (4) – Projected Average Loss For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, Y, or Z, as appropriate. A. Costs that represent the projected average loss for the period estimated on the basis of the cost of comparable purchased insurance. B. Costs that are based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with generally accepted actuarial principles and practices. C. The actual amount of losses are considered to represent the projected average loss for the period. Y. Other, or more than one method. 1/ Z. Not applicable Column (5) – Insurance Administration Expenses For each self-insured group plan, or the self-insured portion of purchased insurance, enter code A, B, C, D, Y, or Z, as appropriate, to indicate how administrative costs are treated. A. Separately identified and accumulated in indirect cost pool(s). B. Separately identified, accumulated, and allocated to cost objectives either at the segment and/or home office level (Describe allocation method on a Continuation Sheet). C. Not separately identified, but included in indirect cost pool(s). (Describe pool(s) on a Continuation Sheet). D. Incurred by an insurance carrier or third party. (Describe accumulation and allocation process on a Continuation Sheet). Y. Other 1/ Z. Not applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) VII - 10

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description
	Part VIII Instructions FOR HOME OFFICE, AS APPLICABLE (Includes home office type operations of subsidiaries, joint ventures, partnerships, etc.). 1/ This part should be completed only by the office of a corporation or other business entity where such an office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VII of the Disclosure Statement. Data for this part should cover the reporting unit's (corporate or other intermediate level home office's) most recently completed fiscal year. For a corporate (home) office, such data should cover the entire corporation. For a intermediate level home office, they should cover the subordinate organizations administered by that group office.
8.1.0	Organizational Structure. On a continuation sheet, provide the following information: 1. In column (1) list segments and other intermediate level home offices reporting to this home office. 2. In column (2) insert "yes" or "no" to indicate if reporting units have recorded any CAS-covered Government Sales, and 3. In column (3) provide the percentage of annual CAS-covered Government Sales as a Percentage of Total Sales (Government and Commercial), if applicable, as follows: A. Less than 10% B. 10%-50% C. 51%-80% D. 81%-95% E. Over 95% Segment or Other Intermediary Home Office (1) — CAS Covered Government Sales (2) — Government Sales as a Percentage of Total Sales (3)
8.2.0	Other Applicable Disclosure Statement Parts. (Refer to page (i) 4., General Instructions, and Parts V, VI and VII of the Disclosure Statement. Indicate below the parts that the reporting unit has completed concurrently with Parts I and VIII.) A. ____ Part V - Depreciation and Capitalization Practices B. ____ Part VI - Other Costs and Credits C. ____ Part VII - Deferred Compensation and Insurance Costs Z. ____ Not Applicable 1/ For definition of home office see 48 CFR 9904.403.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description
8.3.0	<u>Expenses or Pools of Expenses and Methods of Allocation.</u> For classification purposes, three methods of allocation, defined as follows are to be used: (i) Directly Allocated–those expenses that are charged to specific corporate segments or other intermediate level home offices based on a specific identification of costs incurred, as described in 9904.403; (ii) Homogeneous Expense Pools–those individual or groups of expenses which are allocated using a base which reflects beneficial or causal relationships, as described in 9904.403; and (iii) Residual Expense–the remaining expenses which are allocated to all segments by means of a base representative of the total activity of such segments. <u>Allocation Base Codes</u> A. Sales B. Cost of Sales C. Total Cost Input (Direct Material, Direct Labor, Other Direct Costs, and Applicable Overhead) D. Total Cost Incurred (Total Cost Input Plus G&A Expenses) E. Prime Cost (Direct Material, Direct Labor, and Other Direct Costs F. Three factor formula (CAS 9904.403-50(c)) G. Processing or Conversion Cost (Direct Labor and Applicable Overhead) H. Direct Labor Dollars I. Direct Labor Hours J. Machine Hours K. Usage L. Unit of Production M. Direct Material Cost N. Total Payroll Dollars (Direct and Indirect Employees) O. Headcount or Number of employees (Direct and Indirect Employees) P. Square Feet Q. Value Added Y. Other, or More than One Basis <u>1</u>/ (On a continuation sheet, under each of the headings 8.3.1, 8.3.2, and 8.3.3 enter the type of expenses or the name of the expense pool(s). For each of the types of expense or expense pools listed, also indicate as item (a) the major functions, activities, and elements of cost included. In addition, for items listed under 8.3.2 and 8.3.3 enter one of the Allocation Base Codes A through Q, or Y, to indicate the basis of allocation and describe as item (b) the make up of the base(s). For example, if direct labor dollars are used, are ovetime premiums, fringe benefits, etc. included? For items listed under 8.3.2 and 8.3.3, if a pool is not allocated to all reporting units listed under 8.1.0, then list those reporting units either receiving or not receiving an allocation. Also identify special allocations of residual expenses and/or fixed mangement charges (see 9904.403-40(c)(3)). <u>1</u>/ Describe on a Continuation Sheet.

FORM CASB DS-1 (REV 2/96) VIII - 2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description	
	Type of Expenses or Name of Pool of Expenses	
8.3.1	Directly Allocated	
	1. _____	
	(a) Major functions, activities, and elements of cost include:	
	_____	
	_____	
	2. _____	
	(a) Major functions, activities, and elements of cost include:	
	_____	
	_____	
8.3.2	Homogeneous Expense Pools	Allocation Base Code
	1. _____	____
	(a) Major functions, activities, and elements of cost include:	
	_____	
	_____	
	(b) Description/Make up of the allocation base:	
	_____	
	_____	
	2. _____	____
	(a) Major functions, activities, and elements of cost include:	
	_____	
	_____	
	(b) Description/Make up of the allocation base:	
	_____	
	_____	

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679	PART VIII - HOME OFFICE EXPENSES NAME OF REPORTING UNIT

Item No.	Item description
8.3.3	Residual Expenses _____ Allocation Base Code ____ (a) Major functions, activities, and elements of cost include: _____ _____ (b) Description/Make up of the allocation base: _____ _____
8.4.0	Transfer of Expenses. If there are normally transfers of expenses from reporting units to this home office, identify on a continuation sheet the classification of the expense and the name of the reporting unit incurring the expense.

FORM CASB DS-1 (REV 2/96) VIII - 4

[61 FR 7621, Feb. 28, 1996]

9903.202–10 Illustration of Disclosure Statement Form, CASB DS–2.

The data which are required to be disclosed by educational institutions are set forth in detail in the Disclosure Statement Form, CASB DS–2, which is illustrated below:

FORM APPROVED OMB NUMBER
0348-0055

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	INDEX

GENERAL INSTRUCTIONS		(i)
COVER SHEET AND CERTIFICATION		C-1
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PART II	Direct Costs	II-1
PART III	Indirect Costs	III-1
PART IV	Depreciation and Use Allowances	IV-1
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PART VI	Deferred Compensation and Insurance Costs	VI-1
PART VII	Central System or Group Expenses	VII-1

FORM CASB DS-2 (REV 10/94)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the educational institution and its cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 of Title 48 CFR (48 CFR 9903).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segments, business units, and central system or group (intermediate administration) offices). Parts II through VI pertain to the types of costs generally incurred by the segment or business unit directly performing under Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). Part VII pertains to the types of costs that are generally incurred by a central or group office and are allocated to one or more segments performing under Federally sponsored agreements.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VI.

4. Each central or group office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing under Federally sponsored agreements should complete the Cover Sheet, the Certification, Part I and Part VII of the Disclosure Statement. Where a central or group office incurs the types of cost covered by Parts IV, V and VI, and the cost amounts allocated to segments performing under Federally sponsored agreements are material, such office(s) should complete Parts IV, V, or VI for such material elements of cost. While a central or group office may have more than one reporting unit submitting Disclosure Statements, only one Statement needs to be submitted to cover the central or group office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

8. Where the cost accounting practice being disclosed is clearly set forth in the institution's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by reference. In such cases, the reporting unit should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement item number. Any supplementary comments needed to fully describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when disclosed practices are changed to comply with a new CAS or when practices are changed with or without agreement of the Government (Also see 48 CFR 9903.202-3).

10. Amendments shall be submitted to the same offices to which submission would have to be made were an original Disclosure Statement being filed.

11. Each amendment should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ____" and "Effective Date _____" in the Item Description block; and, insert "Revised" under each Item Number amended. Resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

ATTACHMENT - Blank Continuation Sheet

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	CONTINUATION SHEET NAME OF REPORTING UNIT

Item No.	Item Description

FORM CASB DS-2 (REV 10/94)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

0.1 Educational Institution

(a) Name

(b) Street Address

(c) City, State and ZIP Code

(d) Division or Campus of (if applicable)

0.2 Reporting Unit is: (Mark one.)

A. ____ Independently Administered Public Institution
B. ____ Independently Administered Nonprofit Institution
C. ____ Administered as Part of a Public System
D. ____ Administered as Part of a Nonprofit System
E. ____ Other (Specify) _____

0.3 Official to Contact Concerning this Statement:

(a) Name and Title

(b) Phone Number (include area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)

(a) ____ Original Statement
(b) ____ Amended Statement; Revision No. _____

B. Effective Date of this Statement: (Specify) _____

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

A. Cognizant Federal Agency: _____
_____

B. Cognizant Federal Auditor: _____
_____

FORM CASB DS-2 (REV 10/94) C-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a Revision, is the complete and accurate disclosure as of the date of certification shown below by the above-named organization of its cost accounting practices, as required by the Disclosure Regulations (48 CFR 9903.202) of the Cost Accounting Standards Board under 41 U.S.C. § 422.

Date of Certification: _____

_____
(Signature)

_____
(Print or Type Name)

_____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE
IS PRESCRIBED IN
18 U.S.C. § 1001

FORM CASB DS-2 (REV 10/94) C-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item Description
	Part I
1.1.0	Description of Your Cost Accounting System for recording expenses charged to Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. _____ Accrual B. _____ Modified Accrual Basis 1/ C. _____ Cash Basis Y. _____ Other 1/
1.2.0	Integration of Cost Accounting with Financial Accounting. The cost accounting system is: (Mark one. If B or C is marked, describe on a continuation sheet the costs which are accumulated on memorandum records.) A. _____ Integrated with financial accounting records (Subsidiary cost accounts are all controlled by general ledger control accounts.) B. _____ Not integrated with financial accounting records (Cost data are accumulated on memorandum records.) C. _____ Combination of A and B
1.3.0	Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federally sponsored agreements are: (Mark one) A. _____ Specifically identified and recorded separately in the formal financial accounting records. 1/ B. _____ Identified in separately maintained accounting records or workpapers. 1/ C. _____ Identifiable through use of less formal accounting techniques that permit audit verification. 1/ D. _____ Combination of A, B or C 1/ E. _____ Determinable by other means. 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT

Item No.	Item Description
1.3.1	Treatment of Unallowable Costs. (Explain on a continuation sheet how unallowable costs and directly associated costs are treated in each allocation base and indirect expense pool, e.g., when allocating costs to a major function or activity; when determining indirect cost rates; or, when a central office or group office allocates costs to a segment.)
1.4.0	Cost Accounting Period: _____ (Specify the twelve month period used for the accumulation and reporting of costs under Federally sponsored agreements, e.g., 7/1 to 6/30. If the cost accounting period is other than the institution's fiscal year used for financial accounting and reporting purposes, explain circumstances on a continuation sheet.)
1.5.0	State Laws or Regulations. Identify on a continuation sheet any State laws or regulations which influence the institution's cost accounting practices, e.g., State administered pension plans, and any applicable statutory limitations or special agreements on allowance of costs.
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part II Institutions should disclose what costs are, or will be, charged directly to Federally sponsored agreements or similar cost objectives as Direct Costs. It is expected that the disclosed cost accounting practices (as defined at 48 CFR 9903.302-1) for classifying costs either as direct costs or indirect costs will be consistently applied to all costs incurred by the reporting unit.
2.1.0	Criteria for Determining How Costs are Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For all major categories of cost under each major function or activity such, as instruction, organized research, other sponsored activities and other institutional activities, describe on a continuation sheet, your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives. Particular emphasis should be placed on items of cost that may be treated as either direct or indirect costs (e.g., Supplies, Materials, Salaries and Wages, Fringe Benefits, etc.) depending upon the purpose of the activity involved. Separate explanations on the criteria governing each direct cost category identified in this Part II are required. Also, list and explain if there are any deviations from the specified criteria.)
2.2.0	Description of Direct Materials. All materials and supplies directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the principal classes of materials which are charged as direct materials and supplies.)
2.3.0	Method of Charging Direct Materials and Supplies. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)
2.3.1	Direct Purchases for Projects are Charged to Projects at: A. ____ Actual Invoiced Costs B. ____ Actual Invoiced Costs Net of Discounts Taken Y. ____ Other(s) 1/ Z. ____ Not Applicable
2.3.2	Inventory Requisitions from Central or Common, Institution-owned Inventory. (Identify the inventory valuation method used to charge projects): A. ____ First In, First Out B. ____ Last In, First Out C. ____ Average Costs 1/ D. ____ Predetermined Costs 1/ Y. ____ Other(s) 1/ Z. ____ Not Applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.4.0	Description of Direct Personal Services. All personal services directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the personal services compensation costs, including applicable fringe benefits costs, if any, within each major institutional function or activity that are charged as direct personal services.)
2.5.0	Method of Charging Direct Salaries and Wages. (Mark the appropriate line(s) for each Direct Personal Services Category to identify the method(s) used to charge direct salary and wage costs to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, fully describe on a continuation sheet, the applicable methods used.)

	Direct Personal Services Category			
	Faculty (1)	Staff (2)	Students (3)	Other 1/ (4)
A. Payroll Distribution Method (Individual time card/actual hours and rates)	____	____	____	____
B. Plan - Confirmation (Budgeted, planned or assigned work activity, updated to reflect significant changes)	____	____	____	____
C. After-the-fact Activity Records (Percentage Distribution of employee activity)	____	____	____	____
D. Multiple Confirmation Records (Employee Reports prepared each academic term, to account for employee's activities, direct and indirect charges are certified separately.)	____	____	____	____
Y. Other(s) 1/	____	____	____	____

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.5.1	Salary and Wage Cost Distribution Systems. Within each major function or activity, are the methods marked in Item 2.5.0 used by all employees compensated by the reporting unit? (If "NO", describe on a continuation sheet, the types of employees not included and describe the methods used to identify and distribute their salary and wage costs to direct and indirect cost objectives.) ____ Yes ____ No
2.5.2	Salary and Wage Cost Accumulation System. (Within each major function or activity, describe, on a continuation sheet, the specific accounting records or memorandum records used to accumulate and record the share of the total salary and wage costs attributable to each employee's direct (Federally sponsored projects, non-sponsored projects or similar cost objectives) and indirect activities. Indicate how the salary and wage cost distributions are reconciled with the payroll data recorded in the institution's financial accounting records.)
2.6.0	Description of Direct' Fringe Benefits Costs. All fringe benefits that are attributable to direct salaries and wages and are charged directly to Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet all of the different types of fringe benefits which are classified and charged as direct costs, e.g., actual or accrued costs of vacation, holidays, sick leave, sabbatical leave, premium pay, social security, pension plans, post-retirement benefits other than pensions, health insurance, training, tuition, tuition remission, etc.)
2.6.1	Method of Charging Direct Fringe Benefits. (Describe on a continuation sheet, how each type of fringe benefit cost identified in item 2.6.0. is measured, assigned and allocated (for definitions, See 9903.302-1); first, to the major functions (e.g., instruction, research); and, then to individual projects or direct cost objectives within each function.)
2.7.0	Description of Other Direct Costs. All other items of cost directly identified with Federally sponsored agreements or similar cost objectives. (List on a continuation sheet the principal classes of other costs which are charged directly, e.g., travel, consultants, services, subgrants, subcontracts, malpractice insurance, etc.)

FORM CASB DS-2 (REV 10/94) II-3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART II- DIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
2.8.0	Cost Transfers. When Federally sponsored agreements or similar cost objectives are credited for cost transfers to other projects, grants or contracts, is the credit amount for direct personal services, materials, other direct charges and applicable indirect costs always based on the same amount(s) or rate(s) (e.g., direct labor rate, indirect costs) originally used to charge or allocate costs to the project (Consider transactions where the original charge and the credit occur in different cost accounting periods). (Mark one , if "No" , explain on a continuation sheet how the credit differs from original charge.) ____ Yes ____ No
2.9.0	Interorganizational Transfers. This item is directed only to those materials, supplies, and services which are, or will be transferred to you from other segments of the educational institution. (Mark the appropriate line(s) in each column to indicate the basis used by you as transferee to charge the cost or price of interorganizational transfers or materials, supplies, and services to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, explain on a continuation sheet.)

	Materials (1)	Supplies (2)	Services (3)
A. At full cost excluding indirect costs attributable to group or central office expenses.	____	____	____
B. At full cost including indirect costs attributable to group or central office expenses.	____	____	____
C. At established catalog or market price or prices based on adequate competition.	____	____	____
Y. Other(s) 1/	____	____	____
Z. Interorganizational transfers are not applicable	____	____	____

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-4

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part III Institutions should disclose how the segment's total indirect costs are identified and accumulated in specific indirect cost categories and allocated to applicable indirect cost pools and service centers within each major function or activity, how service center costs are accumulated and "billed" to users, and the specific indirect cost pools and allocation bases used to calculate the indirect cost rates that are used to allocate accumulated indirect costs to Federally sponsored agreements or similar final cost objectives. A continuation sheet should be used wherever additional space is required or when a response requires further explanation to ensure clarity and understanding. The following Allocation Base Codes are provided for use in connection with Items 3.1.0 and 3.3.0. A. Direct Charge or Allocation B. Total Expenditures C. Modified Total Cost Basis D. Modified Total Direct Cost Basis E. Salaries and Wages F. Salaries, Wages and Fringe Benefits G. Number of Employees (head count) H. Number of Employees (full-time equivalent basis) I. Number of Students (head count) J. Number of Students (full-time equivalent basis) K. Student Hours -- classroom and work performed L. Square Footage M. Usage N. Unit of Product O. Total Production P. More than one base (Separate Cost Groupings) 1/ Y. Other(s) 1/ Z. Category or Pool not applicable 1/ List on a continuation sheet, the category and subgrouping(s) of expense involved and the allocation base(s) used.

FORM CASB DS-2 (REV 10/94) III-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
3.1.0	Indirect Cost Categories - Accumulation and Allocation. This item is directed at the identification, accumulation and allocation of all indirect costs of the institution. (Under the column heading, "Accumulation Method," insert "Yes" or "No" to indicate if the cost elements included in each indirect cost category are identified, recorded and accumulated in the institution's formal accounting system. If "No," describe on a continuation sheet, how the cost elements included in the indirect cost category are identified and accumulated. Under the column heading "Allocation Base," enter one of the allocation base codes A through P, Y, or Z, to indicate the basis used for allocating the accumulated costs of each indirect cost category to other applicable indirect cost categories, indirect cost pools, other institutional activities, specialized service facilities and other service centers. Under the column heading "Allocation Sequence," insert 1, 2, or 3 next to each of the first three indirect cost categories to indicate the sequence of the allocation process. If cross-allocation techniques are used, insert "CA." If an indirect cost category listed in this section is not used, insert "NA.")

Indirect Cost Category	Accumulation Method	Allocation Base Code	Allocation Sequence
(a) Depreciation/Use Allowances/Interest			___
Building	___	___	
Equipment	___	___	
Capital Improvements to Land 1/	___	___	
Interest 1/	___	___	
(b) Operation and Maintenance	___	___	___
(c) General Administration and General Expense	___	___	___
(d) Departmental Administration	___	___	
(e) Sponsored Projects Administration	___	___	
(f) Library	___	___	
(g) Student Administration and Services	___	___	
(h) Other 1/	___	___	

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description

3.2.0 Service Centers. Service centers are departments or functional units which perform specific technical or administrative services primarily for the benefit of other units within a reporting unit. Service Centers include "recharge centers" and the "specialized service facilities" defined in Section J of Circular A-21. (The codes identified below should be inserted on the appropriate line for each service center listed. The column numbers correspond to the paragraphs listed below that provide the codes. Explain on a Continuation Sheet if any of the services are charged to users on a basis other than usage of the services. Enter "Z" in Column 1, if not applicable.)

		(1)	(2)	(3)	(4)	(5)	(6)
(a)	Scientific Computer Operations	___	___	___	___	___	___
(b)	Business Data Processing	___	___	___	___	___	___
(c)	Animal Care Facilities	___	___	___	___	___	___
(d)	Other Service Centers with Annual Operating Budgets exceeding $1,000,000 or that generate significant charges to Federally sponsored agreements either as a direct or indirect cost. (Specify below; use a Continuation Sheet, if necessary)						
	_____	___	___	___	___	___	___
	_____	___	___	___	___	___	___

(1) Category Code: Use code "A" if the service center costs are billed only as direct costs of final cost objectives; code "B" if billed only to indirect cost categories or indirect cost pools; code "C" if billed to both direct and indirect cost objectives.

(2) Burden Code: Code "A" – center receives an allocation of all applicable indirect costs; Code "B" – partial allocation of indirect costs; Code "C" – no allocation of indirect costs.

(3) Billing Rate Code: Code "A" – billing rates are based on historical costs; Code "B" – rates are based on projected costs; Code "C" – rates are based on a combination of historical and projected costs; Code "D" – billings are based on the actual costs of the billing period; Code "Y" – other (explain on a Continuation Sheet).

(4) User Charges Code: Code "A" – all users are charged at the same billing rates; Code "B" – some users are charged at different rates than other users (explain on a Continuation Sheet).

(5) Actual Costs vs. Revenues Code: Code "A" – billings (revenues) are compared to actual costs (expenditures) at least annually; Code "B" – billings are compared to actual costs less frequently than annually.

(6) Variance Code: Code "A" – Annual variances between billed and actual costs are prorated to users (as credits or charges); Code "B" – variances are carried forward as adjustments to billing rate of future periods; Code "C" – annual variances are charged or credited to indirect costs; Code "Y" – other (explain on a Continuation Sheet).

FORM CASB DS-2 (REV 10/94) III-3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
3.3.0	Indirect Cost Pools and Allocation Bases (Identify all of the indirect cost pools established for the accumulation of indirect costs, excluding service centers, and the allocation bases used to distribute accumulated indirect costs to Federally sponsored agreements or similar cost objectives within each major function or activity. For all applicable indirect cost pools, enter the applicable Allocation Base Code A through P, Y, or Z, to indicate the basis used for allocating accumulated pool costs to Federally sponsored agreements or similar cost objectives.) Indirect Cost Pools — Allocation Base Code A. Instruction ____ On-Campus _____ ____ Off-Campus _____ ____ Other 1/ _____ B. Organized Research ____ On-Campus _____ ____ Off-Campus _____ ____ Other 1/ _____ C. Other Sponsored Activities ____ On-Campus _____ ____ Off-Campus _____ ____ Other 1/ _____ D. Other Institutional Activities 1/ _____
3.4.0	Composition of Indirect Cost Pools. (For each pool identified under Items 3.1.0 and 3.2.0, describe on a continuation sheet the major organizational components, subgoupings of expenses, and elements of cost included.) 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-4

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description
3.5.0	Composition of Allocation Bases. (For each allocation base code used in Items 3.1.0 and 3.3.0, describe on a continuation sheet the makeup of the base. For example, if a modified total direct cost base is used, specify which of the elements of direct cost identified in Part II, Direct Costs, that are included, e.g., materials, salaries and wages, fringe benefits, travel costs, and excluded, e.g., subcontract costs over first $25,000. Where applicable, explain if service centers are included or excluded. Specify the benefitting functions and activities included. If any cost objectives are excluded from the allocation base, such cost objectives and the alternate allocation method used should be identified. If an indirect cost allocation is based on Cost Analysis Studies, identify the study, and fully describe the study methods and techniques applied, the composition of the specific allocation base used, and the frequency of each recurring study .
3.6.0	Allocation of Indirect Costs to Programs That Pay Less Than Full Indirect Costs. Are appropriate direct costs of all programs and activites included in the indirect cost allocation bases, regardless of whether allocable indirect costs are fully reimbursed by the sponsoring organizations? A. _____ Yes B. _____ No 1/ 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-5

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART IV- DEPRECIATION AND USE ALLOWANCES NAME OF REPORTING UNIT

Item No.	Item Description

Part IV

4.1.0 Depreciation Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For each asset category listed below, enter a code from A through C in Column (1) describing the method of depreciation; a code from A through D in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use allowances are applied to property units; and Code A or B in Column (4) indicating whether or not the estimated residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.)

	Asset Category	Depreciation Method (1)	Useful Life (2)	Property Unit (3)	Residual Value (4)
(a)	Land Improvements	____	____	____	____
(b)	Buildings	____	____	____	____
(c)	Building Improvements	____	____	____	____
(d)	Leasehold Improvements	____	____	____	____
(e)	Equipment	____	____	____	____
(f)	Furniture and Fixtures	____	____	____	____
(g)	Automobiles and Trucks	____	____	____	____
(h)	Tools	____	____	____	____
(i)	Enter Code Y on this line if other asset categories are used and enumerate on a continuation sheet each such asset category and the applicable codes. (Otherwise enter Code Z.)	____	____	____	____

Column (1)–Depreciation Method Code

A. Straight Line
B. Expensed at Acquisition
C. Use Allowance
Y. Other or more than one method 1/

Column (2)–Useful Life Code

A. Replacement Experience
B. Term of Lease
C. Estimated service life
D. As prescribed for use allowance by Office of Management and Budget Circular No. A-21
Y. Other or more than one method 1/

Column (3)–Property Unit Code

A. Individual units are accounted for separately
B. Applied to groups of assets with similar service lives
C. Applied to groups of assets with varying service lives
Y. Other or more than one method 1/

Column (4)–Residual Value Code

A. Residual value is deducted
B. Residual value is not deducted
Y. Other or more than one method 1/

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART IV- DEPRECIATION AND USE ALLOWANCES NAME OF REPORTING UNIT

Item No.	Item Description
4.1.1	Asset Valuations and Useful Lives. Are the asset valuations and useful lives used in your indirect cost proposal consistent with those used in the institution's financial statements? (Mark one.) A. ____ Yes B. ____ No 1/
4.2.0	Fully Depreciated Assets. Is a usage charge for fully depreciated assets charged to Federally sponsored agreements or similar cost objectives? (Mark one. If yes, describe the basis for the charge on a continuation sheet.) A. ____ Yes B. ____ No
4.3.0	Treatment of Gains and Losses on Disposition of Depreciable Property. Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Excluded from determination of sponsored agreement costs B. ____ Credited or charged currently to the same pools to which the depreciation of the assets was originally charged C. ____ Taken into consideration in the depreciation cost basis of the new items, where trade-in is involved D. ____ Not accounted for separately, but reflected in the depreciation reserve account Y. ____ Other(s) 1/ Z. ____ Not applicable
4.4.0	Criteria for Capitalization. (Enter (a) the minimum dollar amount of expenditures which are capitalized for acquisition, addition, alteration, donation and improvement of capital assets, and (b) the minimum number of expected life years of assets which are capitalized. If more than one dollar amount or number applies, show the information for the majority of your capitalized assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differs from those for the majority of assets.) A. Minimum Dollar Amount _____ B. Minimum Life Years _____
4.5.0	Group or Mass Purchase. Are group or mass purchases (initial complement) of similar items, which individually are less than the capitalization amount indicated above, capitalized? (Mark one.) A. ____ Yes 1/ B. ____ No 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART V- OTHER COSTS AND CREDITS NAME OF REPORTING UNIT

Item No.	Item Description
	Part V
5.1.0	Method of Charging Leave Costs. Do you charge vacation, sick, holiday and sabbatical leave costs to sponsored agreements on the cash basis of accounting (i.e., when the leave is taken or paid), or on the accrual basis of accounting (when the leave is earned)? (Mark applicable line(s))
	A. ____ Cash
	B. ____ Accrual 1/
5.2.0	Applicable Credits. This item is directed at the treatment of "applicable credits" as defined in Section C of OMB Circular A-21 and other incidental receipts (e.g., purchase discounts, insurance refunds, library fees and fines, parking fees, etc.). (Indicate how the principal types of credits and incidental receipts the institution receives are usually handled.)
	A. ____ The credits/receipts are offset against the specific direct or indirect costs to which they relate.
	B. ____ The credits/receipts are handled as a general adjustment to the indirect pool.
	C. ____ The credits/receipts are treated as income and are not offset against costs.
	D. ____ Combination of methods 1/
	Y. ____ Other 1/
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) V-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT

Item No.	Item Description

Instructions for Part VI

This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits) and insurance. Some organizations may incur all of these costs at the main campus level or for public institutions at the governmental unit level, while others may incur them at subordinate organization levels. Still others may incur a portion of these costs at the main campus level and the balance at subordinate organization levels.

Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs. When the costs allocated to Federally sponsored agreements are material, and the reporting unit does not have access to the information needed to complete an item, the reporting unit should require that entity to complete the applicable portions of this Part VI. (See item 4, page (i), General Instructions)

6.1.0 Pension Plans.

6.1.1 Defined-Contribution Pension Plans. Identify the types and number of pension plans whose costs are charged to Federally sponsored agreements. (Mark applicable line(s) and enter number of plans.)

	Type of Plan	Number of Plans
A. ____	Institution employees participate in State/Local Government Retirement Plan(s)	____
B. ____	Institution uses TIAA/CREF plan or other defined contribution plan that is managed by an organization not affiliated with the institution	____
C. ____	Institution has its own Defined-Contribution Plan(s) 1/	____

6.1.2 Defined-Benefit Pension Plan. (For each defined-benefit plan (other than plans that are part of a State or Local government pension plan) describe on a continuation sheet the actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.)

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT
Item No.	Item Description
6.2.0	Post Retirement Benefits Other Than Pensions (including post retirement health care benefits) (PRBs). (Identify on a continuation sheet all PRB plans whose costs are charged to Federally sponsored agreements. For each plan listed, state the plan name and indicate the approximate number and type of employees covered by each plan.) Z. [ ] Not Applicable
6.2.1	Determination of Annual PRB Costs. (On a continuation sheet, indicate whether PRB costs charged to Federally sponsored agreements are determined on the cash or accrual basis of accounting. If costs are accrued, describe the accounting practices used, including actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.)
6.3.0	Self-Insurance Programs (Employee Group Insurance). Costs of the self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.) A. ____ When accrued (book accrual only) B. ____ When contributions are made to a nonforfeitable fund C. ____ When contributions are made to a forfeitable fund D. ____ When the benefits are paid to an employee E. ____ When amounts are paid to an employee welfare plan Y. ____ Other or more than one method 1/ Z. ____ Not Applicable
6.4.0	Self-Insurance Programs (Worker's Compensation, Liability and Casualty Insurance.)
6.4.1	Worker's Compensation and Liability. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.) A. ____ When claims are paid or losses are incurred (no provision for reserves) B. ____ When provisions for reserves are recorded based on the present value of the liability C. ____ When provisions for reserves are recorded based on the full or undiscounted value, as contrasted with present value, of the liability D. ____ When funds are set aside or contributions are made to a fund Y. ____ Other or more than one method 1/ Z. ____ Not Applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) VI-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS NAME OF REPORTING UNIT
Item No.	Item Description
6.4.2	Casualty Insurance. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.) A. ____ When losses are incurred (no provision for reserves) B. ____ When provisions for reserves are recorded based on replacement costs C. ____ When provisions for reserves are recorded based on reproduction costs new less observed depreciation (market value) excluding the Value of land and other indestructibles. D. ____ Losses are charged to fund balance with no charge to contracts and grants (no provision for reserves) Y. ____ Other or more than one method 1/ Z. ____ Not Applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) VI-3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VII- CENTRAL SYSTEM OR GROUP EXPENSES NAME OF REPORTING UNIT

Item No.	Item Description
	DISCLOSURE BY CENTRAL SYSTEM OFFICE, OR GROUP (INTERMEDIATE ADMINISTRATION) OFFICE, AS APPLICABLE. Instructions for Part VII This part should be completed only by the central system office or a group office of an educational system when that office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VI of the Disclosure Statement. The reporting unit (central system or group office) should disclose how costs of services provided by the reporting unit are, or will be, accumulated and allocated to applicable segments of the institution. For a central system office, disclosure should cover the entire institution. For a group office, disclosure should cover all of the subordinate organizations administered by that group office.
7.1.0	Organizational Structure. On a continuation sheet, list all segments of the university or university system, including hospitals, Federally Funded Research and Development Centers (FFRDC's), Government-owned Contractor-operated (GOCO) facilities, and lower-tier group offices serviced by the reporting unit.
7.2.0	Cost Accumulation and Allocation. On a continuation sheet, provide a description of: A. The services provided to segments of the university or university system (including hospitals, FFRDC's, GOCO facilities, etc.), in brief. B. How the costs of the services are identified and accumulated. C. The basis used to allocate the accumulated costs to the benefitting segments. D. Any costs that are transferred from a segment to the central system office or the intermediate administrative office, and which are reallocated to another segment(s). If none, so state. E. Any fixed management fees that are charged to a segment(s) in lieu of a prorata or allocation basis and the basis of such charges. If none, so state.

FORM CASB DS-2 (REV 10/94) VII-1

[59 FR 55757, Nov. 8, 1994]

Subpart 9903.3—CAS Rules and Regulations

9903.301 Definitions.

(a) The definitions set forth below apply to this chapter 99.

Accrued benefit cost method. See 9904.412–30.

Accumulating costs. See 9904.401–30.

Actual cash value. See 9904.416–30.

Actual cost. See 9904.401–30 for the broader definition and 9904.407–30 for a more restricted definition applicable only to the standard on the use of standard costs for direct material and direct labor.

Actuarial assumption. See 9904.412–30 or 9904.413–30.

Actuarial cost method. See 9904.412–30 or 9904.413–30.

Actuarial gain and loss. See 9904.412–30 or 9904.413–30.

Actuarial liability. See 9904.412–30 or 9904.413–30.

Actuarial valuation. See 9904.412–30 or 9904.413–30.

Allocate. See 9904.402–30, 9904.403–30, 9904.406–30, 9904.410–30, 9904.411–30, 9904.418–30 or 9904.420–30.

Asset accountability unit. See 9904.404–30.

Assignment of cost to cost accounting periods. See 9903.302–1(b).

Bid and proposal (B&P) cost. See 9904.420–30.

Business unit. See 9904.410–30, 9904.411–30 or 9904.414–30.

CAS-covered contract, as used in this part, means any negotiated contract or subcontract in which a CAS clause is required to be included.

Category of material. See 9904.411–30.

Change to a cost accounting practice. See 9903.302–2.

Compensated personal absence. See 9904.408–30.

Cost accounting practice. See 9903.302–1.

Cost input. See 9904.410–30.

Cost objective. See 9904.402–30, 9904.406–30, 9904.410–30 or 9904.411–30.

Cost of capital committed to facilities. See 9904.414–30.

Currently performing, as used in this part, means that a contractor has been awarded a contract, but has not yet received notification of final acceptance of all supplies, services, and data deliverable under the contract (including options).

Deferred compensation. See 9904.415–30.

Defined-benefit pension plan. See 9904.412–30.

Defined-contribution pension plan. See 9904.412–30.

Direct cost. See 9904.402–30 or 9904.418–30.

Directly associated cost. See 9904.405–30.

Disclosure statement, as used in this part, means the Disclosure Statement required by 9903.202–1.

Entitlement. See 9904.408–30.

Estimating costs. See 9904.401–30.

Expressly unallowable cost. See 9904.405–30.

Facilities capital. See 9904.414–30.

Final cost objective. See 9904.402–30 or 9904.410–30.

Fiscal year. See 9904.406–30.

Funded pension cost. See 9904.412–30.

Funding agency. See 9904.412–30.

General and administrative (G&A) expense. See 9904.410–30 or 9904.420–30.

Home office. See 9904.403–30 or 9904.420–30.

Immediate-gain actuarial cost method. See 9904.413–30.

Independent research and development (IR&D) cost. See 9904.420–30.

Indirect cost. See 9904.402–30, 9904.405–30, 9904.418–30 or 9904.420–30.

Indirect cost pool. See 9904.401–30, 9904.402–30, 9904.406–30 or 9904.418–30.

Insurance administration expenses. See 9904.416–30.

Intangible capital asset. See 9904.414–30 or 9904.417–30.

Labor cost at standard. See 9904.407–30.

Labor-rate standard. See 9904.407–30.

Labor-time standard. See 9904.407–30.

Material cost at standard. See 9904.407–30.

Material inventory record. See 9904.411–30.

Material-price standard. See 9904.407–30.

Material-quantity standard. See 9904.407–30.

Measurement of cost. See 9904.302–1(c).

Moving average cost. See 9904.411–30.

Multiemployer pension plan. See 9904.412–30.

Negotiated subcontract, as used in this part, means any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two persons

not associated with each other or with such contractor or subcontractor, providing

(1) The solicitation to all competitors is identical,

(2) Price is the only consideration in selecting the subcontractor from among the competitors solicited, and

(3) The lowest offer received in compliance with the solicitation from among those solicited is accepted.

Net awards, as used in this chapter, means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions.

Normal cost. See 9904.412–30 or 9904.413–30.

Operating revenue. See 9904.403–30.

Original complement of low cost equipment. See 9904.404–30.

Pay-as-you-go cost method. See 9904.412–30.

Pension plan. See 9904.412–30 or 9904.413–30.

Pension plan participant. See 9904.413–30.

Pricing. See 9904.401–30.

Production unit. See 9904.407–30.

Projected average loss. See 9904.416–30.

Projected benefit cost method. See 9904.412–30 or 9904.413–30.

Proposal. See 9904.401–30.

Repairs and maintenance. See 9904.404–30.

Reporting costs. See 9904.401–30.

Residual value. See 9904.409–30.

Segment. See 9904.403–30, 9904.410–30, 9904.413–30 or 9904.420–30.

Self-insurance. See 9904.416–30.

Self-insurance charge. See 9904.416–30.

Service life. See 9904.409–30.

Small business, as used in this part, means any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which, under 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration in Part 121 of Title 13 of the Code of Federal Regulations, is determined to be a small business concern for the purpose of Government contracting.

Spread-gain actuarial cost method. See 9904.413–30.

Standard cost. See 9904.407–30.

Tangible capital asset. See 9904.403–30, 9904.404–30, 9904.409–30, 9904.414–30 or 9904.417–30.

Termination gain or loss. See 9904.413–30.

Unallowable cost. See 9904.405–30.

Variance. See 9904.407–30.

Weighted average cost. See 9904.411–30.

(b) The definitions set forth below are applicable exclusively to educational institutions and apply to this chapter 99.

Business unit. See 9903.201–2(c)(2)(ii).

Educational institution. See 9903.201–2(c)(2)(i).

Intermediate cost objective. See 9905.502–30(a)(7).

Segment. See 9903.201–2(c)(2)(ii).

[57 FR 14153, Apr. 17, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 59 FR 55770, Nov. 8, 1994; 61 FR 39361, July 29, 1996]

9903.302 Definitions, explanations, and illustrations of the terms, "cost accounting practice" and "change to a cost accounting practice."

9903.302–1 Cost accounting practice.

Cost accounting practice, as used in this part, means any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost.

(a) *Measurement of cost,* as used in this part, encompasses accounting methods and techniques used in defining the components of cost, determining the basis for cost measurement, and establishing criteria for use of alternative cost measurement techniques. The determination of the amount paid or a change in the amount paid for a unit of goods and services is not a cost accounting practice. Examples of cost accounting practices which involve measurement of costs are—

(1) The use of either historical cost, market value, or present value;

(2) The use of standard cost or actual cost; or

(3) The designation of those items of cost which must be included or excluded from tangible capital assets or pension cost.

(b) *Assignment of cost to cost accounting periods,* as used in this part, refers

to a method or technique used in determining the amount of cost to be assigned to individual cost accounting periods. Examples of cost accounting practices which involve the assignment of cost to cost accounting periods are requirements for the use of specified accrual basis accounting or cash basis accounting for a cost element.

(c) *Allocation of cost to cost objectives,* as used in this part, includes both direct and indirect allocation of cost. Examples of cost accounting practices involving allocation of cost to cost objectives are the accounting methods or techniques used to accumulate cost, to determine whether a cost is to be directly or indirectly allocated to determine the composition of cost pools, and to determine the selection and composition of the appropriate allocation base.

9903.302–2 Change to a cost accounting practice.

Change to a cost accounting practice, as used in this part, means any alteration in a cost accounting practice, as defined in 9903.302–1, whether or not such practices are covered by a Disclosure Statement, except for the following:

(a) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice. As used here, function is an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished.

(b) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

9903.302–3 Illustrations of changes which meet the definition of "change to a cost accounting practice."

(a) The method or technique used for measuring costs has been changed.

Description	Accounting treatment
(1) Contractor changes its actuarial cost method for computing pension costs..	(1)(i) Before change: The contractor computed pension costs using the aggregate cost method. (ii) After change: The contractor computes pension cost using the unit credit method.
(2) Contractor uses standard costs to account for its direct labor. Labor cost at standard was computed by multiplying labor-time standard by actual labor rates. The contractor changes the computation by multiplying labor-time standard by labor-rate standard.	(2)(i) Before change: Contractor's direct labor cost was measured with only one component set at standard. (ii) After change: Contractor's direct labor cost is measured with both the time and rate components set at standard.

(b) The method or technique used for assignment of cost to cost accounting periods has been changed.

Description	Accounting treatment
(1) Contractor changes his established criteria for capitalizing certain classes of tangible capital assets whose acquisition costs totaled $1 million per cost accounting period.	(1)(i) Before change: Items having acquisition costs of between $200 and $400 per unit were capitalized and depreciated over a number of cost accounting periods. (ii) After change: The contractor charges the value of assets costing between $200 and $400 per unit to an indirect expense pool which is allocated to the cost objectives of the cost accounting period in which the cost was incurred.
(2) Contractor changes his methods for computing depreciation for a class of assets.	(2)(i) Before change: The contractor assigned depreciation costs to cost accounting periods using an accelerated method. (ii) After change: The contractor assigns depreciation costs to cost accounting periods using the straight line method.
(3) Contractor changes his general method of determining asset lives for classes of assets acquired prior to the effective date of CAS 409.	(3)(i) Before change: The contractor identified the cost accounting periods to which the cost of tangible capital assets would be assigned using guideline class lives provided in IRS Rev. Pro. 72–10. (ii) After change: The contractor changes the method by which he identifies the cost accounting periods to which the costs of tangible capital assets will be assigned. He now uses the expected actual lives based on past usage.

(c) The method or technique used for allocating costs has been changed.

Description	Accounting treatment
(1) Contractor changes his method of allocating G&A expenses under the requirements of Cost Accounting Standard 410.	(1)(i) Before change: The contractor operating under Cost Accounting Standard 410 has been allocating his general and administrative expense pool to final cost objectives on a total cost input base in compliance with the Standard. The contractor's business changes substantially such that there are significant new projects which have only insignificant quantities of material. (ii) After change: After the addition of the new work, an evaluation of the changed circumstances reveals that the continued use of a total cost input base would result in a significant distortion in the allocation of the G&A expense pool in relation to the benefits received. To remain in compliance with Standard 410, the contractor alters his G&A allocation base from a total cost input base to a value added base.
(2) The contractor changes the accounting for hardware common to all projects.	(2)(i) Before change: The contractor allocated the cost of purchased or requisitioned hardware directly to projects. (ii) After change: The contractor charges the cost of purchased or requisitioned hardware to an indirect expense pool which is allocated to projects using an appropriate allocation base.
(3) The contractor merges operating segment A and B which use different cost accounting practices in accounting for manufacturing overhead costs.	(3)(i) Before change: In segment, A, the costs of the manufacturing overhead pool have been allocated to final cost objectives using a direct labor hours base; in segment B, the costs of the manufacturing overhead pool have been allocated to final cost objectives using a direct labor dollars base. (ii) After change: As a result of the merger of operations, the combined segment decides to allocate the cost of the manufacturing overhead pool to all final cost objectives, using a direct labor dollars base. Thus, for those final cost objectives referred to in segment A, the cost of the manufacturing overhead pool will be allocated to the final cost objectives of segment A using a direct labor dollars base instead of a direct labor hours base.

9903.302–4 Illustrations of changes which do not meet the definition of "Change to a cost accounting practice."

Description	Accounting treatment
(a) Changes in the interest rate levels in the national economy have invalidated the prior actuarial assumption with respect to anticipated investment earnings. The pension plan administrators adopted an increased (decreased) interest rate actuarial assumption. The company allocated the resulting pension costs to all final cost objectives.	(a) Adopting the increase (decrease) in the interest rate actuarial assumption is not a change in cost accounting practice.
(b) The basic benefit amount for a company's pension plan is increased from $8 to $10 per year of credited service. The change increases the dollar amount of pension cost allocated to all final cost objectives.	(b) The increase in the amount of the benefits is not a change in cost accounting practice.
(c) A contractor who has never paid pensions establishes for the first time a pension plan. Pension costs for the first year amounted to $3.5 million.	(c) The initial adoption of an accounting practice for the first time incurrence of a cost is not a change in cost accounting practice.
(d) A contractor maintained a Deferred Incentive Compensation Plan. After several years' experience, the plan was determined not to be attaining its objective, so it was terminated, and no future entitlements were paid.	(d) There was a termination of the Deferred Incentive Compensation Plan. Elimination of a cost is not a change in cost accounting practice.
(e) A contractor eliminates a segment that was operated for the purpose of doing research for development of products related to nuclear energy.	(e) The projects and expenses related to nuclear energy projects have been terminated. No transfer of these projects and no further work in this area is planned. This is an elimination of cost and not a change in cost accounting practice.

Description	Accounting treatment
(f) For a particular class of assets for which technological changes have rarely affected asset lives, a contractor starts with a 5-year average of historical lives to estimate future lives. He then considers technological changes and likely use. For the past several years the process resulted in an estimated future life of 10 years for this class of assets. This year a technological change leads to a prediction of a useful life of 7 years for the assets acquired this year for the class of assets.	(f) The change in estimate (not in method) is not a change in cost accounting practice. The contractor has not changed the method or technique used to determine the estimate. The methodology applied has indicated a change in the estimated life, and this is not a change in cost accounting practice.
(g) The marketing department of a segment has reported directly to the general manager of the segment. The costs of the marketing department have been combined as part of the segment's G&A expense pool. The company reorganizes and requires the marketing department to report directly to a vice president at corporate headquarters.	(g) After the organization change in the company's reporting structure, the parties agree that the appropriate recognition of the beneficial or causal relationship between the costs of the marketing department and the segment is to continue to combine these costs as part of the segment's G&A expense pool. Thus, the organizational change has not resulted in a change in cost accounting practice.

9903.303 Effect of filing Disclosure Statement.

(a) A disclosure of a cost accounting practice by a contractor does not determine the allowability of particular items of cost. Irrespective of the practices disclosed by a contractor, the question of whether or not, or the extent to which, a specific element of cost is allowed under a contract remains for consideration in each specific instance. Contractors are cautioned that the determination of the allowability of cost items will remain a responsibility of the contracting officers pursuant to the provisions of the applicable procurement regulations.

(b) The individual Disclosure Statement may be used in audits of contracts or in negotiation of prices leading to contracts. The authority of the audit agencies and the contracting officers is in no way abrogated by the material presented by the contractor in his Disclosure Statement. Contractors are cautioned that their disclosures must be complete and accurate; the practices disclosed may have a significant impact on ways in which contractors will be required to comply with Cost Accounting Standards.

9903.304 Concurrent full and modified coverage.

Contracts subject to full coverage may be performed during a period in which a previously awarded contract subject to modified coverage is being performed. Compliance with full coverage may compel the use of cost accounting practices that are not required under modified coverage. Under these circumstances the cost accounting practices applicable to contracts subject to modified coverage need not be changed. Any resulting differences in practices between contracts subject to full coverage and those subject to modified coverage shall not constitute a violation of 9904.401 and 9904.402. This principle also applies to contracts subject to modified coverage being performed during a period in which a previously awarded contract subject to full coverage is being performed.

9903.305 Materiality.

In determining whether amounts of cost are material or immaterial, the following criteria shall be considered where appropriate; no one criterion is necessarily determinative:

(a) The absolute dollar amount involved. The larger the dollar amount, the more likely that it will be material.

(b) The amount of contract cost compared with the amount under consideration. The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.

(c) The relationship between a cost item and a cost objective. Direct cost items, especially if the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs.

(d) The impact on Government funding. Changes in accounting treatment will have more impact if they influence

the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.

(e) The cumulative impact of individually immaterial items. It is appropriate to consider whether such impacts:

(1) Tend to offset one another, or

(2) Tend to be in the same direction and hence to accumulate into a material amount.

(f) The cost of administrative processing of the price adjustment modification shall be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

9903.306 Interpretations.

In determining amounts of increased costs in the clauses at 9903.201–4(a), Cost Accounting Standards, 9903.201–4(c), Disclosure and Consistency of Cost Accounting Practices, and 9903.201–4(d), Consistency in Cost Accounting, the following considerations apply:

(a) Increased costs shall be deemed to have resulted whenever the cost paid by the Government results from a change in a contractor's cost accounting practices or from failure to comply with applicable Cost Accounting Standards, and such cost is higher than it would have been had the practices not been changed or applicable Cost Accounting Standards complied with.

(b) If the contractor under any fixed-price contract, including a firm fixed-price contract, fails during contract performance to follow its cost accounting practices or to comply with applicable Cost Accounting Standards, increased costs are measured by the difference between the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the cost accounting practices used during contract performance. The determination of the contract price that would have been agreed to will be left to the contracting parties and will depend on the circumstances of each case.

(c) The statutory requirement underlying this interpretation is that the United States not pay increased costs, including a profit enlarged beyond that in the contemplation of the parties to the contract when the contract costs, price, or profit is negotiated, by reason of a contractor's failure to use applicable Cost Accounting Standards, or to follow consistently its cost accounting practices. In making price adjustments under the Cost Accounting Standards clause at 9903.201–4(a) in fixed price or cost reimbursement incentive contracts, or contracts providing for prospective or retroactive price redetermination, the Federal agency shall apply this requirement appropriately in the circumstances.

(d) The contractor and the contracting officer may enter into an agreement as contemplated by subdivision (a)(4)(ii) of the Cost Accounting Standards clause at 9903.201–4(a), covering a change in practice proposed by the Government or the contractor for all of the contractor's contracts for which the contracting officer is responsible, provided that the agreement does not permit any increase in the cost paid by the Government. Such agreement may be made final and binding, notwithstanding the fact that experience may subsequently establish that the actual impact of the change differed from that agreed to.

(e) An adjustment to the contract price or of cost allowances pursuant to the Cost Accounting Standards clause at 9903.201–4(a) may not be required when a change in cost accounting practices or a failure to follow Standards or cost accounting practices is estimated to result in increased costs being paid under a particular contract by the United States. This circumstance may arise when a contractor is performing two or more covered contracts, and the change or failure affects all such contracts. The change or failure may increase the cost paid under one or more of the contracts, while decreasing the cost paid under one or more of the contracts. In such case, the Government will not require price adjustment for any increased costs paid by the United States, so long as the cost decreases under one or more contracts are at least equal to the increased cost under the other affected contracts, provided that the contractor and the affected contracting officers agree on the method by which the price adjustments are

to be made for all affected contracts. In this situation, the contracting agencies would, of course, require an adjustment of the contract price or cost allowances, as appropriate, to the extent that the increases under certain contracts were not offset by the decreases under the remaining contracts.

(f) Whether cost impact is recognized by modifying a single contract, several but not all contracts, or all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards rules do not in any way restrict the capacity of the parties to select the method by which the cost impact attributable to a change in cost accounting practice is recognized.

9903.307 Cost Accounting Standards Preambles.

Preambles to the Cost Accounting Standards published by the original Cost Accounting Standards Board, as well as those preambles published by the signatories to the Federal Acquisition Regulation respecting changes made under their regulatory authorities, are available by writing to the: Publications Office, Office of Administration, Executive Office of the President, 725 17th Street NW., room 2200, Washington, DC 20500, or by calling (202) 395–7332.

PART 9904—COST ACCOUNTING STANDARDS

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9904.400 [Reserved]

9904.401 Cost accounting standard—consistency in estimating, accumulating and reporting costs.

9904.401–10 [Reserved]

9904.401–20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each contractor's practices used in estimating costs for a proposal are consistent with cost accounting practices used by him in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for cost in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

9904.401–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *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.

(7) *Reporting costs* means provision of cost information to others.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.401–40 Fundamental requirement.

(a) A contractor's practices used in estimating costs in pricing a proposal shall be consistent with his cost accounting practices used in accumulating and reporting costs.

(b) A contractor's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with his practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this section when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

9904.401–50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element or function. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual

cost accumulated and reported therefor. In any event the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements or functions of cost as direct or indirect;

(2) The indirect cost pools to which each element or function of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9904.401–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306a or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of 9904.401–40(a) shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9904.401–40(b), changes in established cost accounting practices during contract performance may be made in accordance with part 99.

9904.401–60 Illustrations.

(a) The following examples are illustrative of applications of cost accounting practices which are deemed to be consistent.

Practices used in estimating costs for proposals	Practices used in accumulating and reporting costs of contract performance
1. Contractor estimates an average direct labor rate for manufacturing direct labor by labor category or function.	1. Contractor records manufacturing direct labor based on actual cost for each individual and collects such costs by labor category or function.
2. Contract estimates an average cost for minor standard hardware items, including nuts, bolts, washers, etc.	2. Contractor records actual cost for minor standard hardware items based upon invoices or material transfer slips.
3. Contractor uses an estimated rate for manufacturing overhead to be applied to an estimated direct labor base. He identifies the items included in his estimate of manufacturing overhead and provides supporting data for the estimated direct labor base.	3. Contractor accounts for manufacturing overhead by individual items of cost which are accumulated in a cost pool allocated to final cost objectives on a direct labor base.

(b) The following examples are illustrative of application of cost accounting practices which are deemed not to be consistent.

Practices used for estimating costs for proposals	Practices used in accumulating and reporting costs of contract performance
4. Contractor estimates a total dollar amount for engineering labor which includes disparate and significant elements or functions of engineering labor. Contractor does not provide supporting data reconciling this amount to the estimates for the same engineering labor cost functions for which he will separately account in contract performance.	4. Contractor accounts for engineering labor by cost function, i.e. drafting, designing, production, engineering, etc.
5. Contractor estimates engineering labor by cost function, i.e. drafting, production engineering, etc.	5. Contractor accumulates total engineering labor in one undifferentiated account.
6. Contractor estimates a single dollar amount for machining cost to cover labor, material and overhead.	6. Contractor records separately the actual costs of machining labor and material as direct costs, and factory overhead as indirect costs.

9904.401–61 Interpretation.

(a) 9904.401, Cost Accounting Standard—Consistency in Estimating, Accumulating and Reporting Costs, requires in 9904.401–40 that a contractor's ''practices used in estimating costs in pricing a proposal shall be consistent with his cost accounting practices used in accumulating and reporting costs.''

(b) In estimating the cost of direct material requirements for a contract, it is a common practice to first estimate the cost of the actual quantities to be incorporated in end items. Provisions are then made for additional direct material costs to cover expected material losses such as those which occur, for example, when items are scrapped, fail to meet specifications, are lost, consumed in the manufacturing process, or destroyed in testing and qualification processes. The cost of some or all of such additional direct material requirements is often estimated by the application of one or more percentage factors to the total

cost of basic direct material requirements or to some other base.

(c) Questions have arisen as to whether the accumulation of direct material costs in an undifferentiated account where a contractor estimates a significant part of such costs by means of percentage factors is in compliance with 9904.401. The most serious questions pertain to such percentage factors which are not supported by the contractor with accounting, statistical, or other relevant data from past experience, nor by a program to accumulate actual costs for comparison with such percentage estimates. The accumulation of direct costs in an undifferentiated account in this circumstance is a cost accounting practice which is not consistent with the practice of estimating a significant part of costs by means of percentage factors. This situation is virtually identical with that described in Illustration 9904.401–60(b)(5), which deals with labor.

(d) 9904.401 does not, however, prescribe the amount of detail required in accumulating and reporting costs. The amount of detail required may vary considerably depending on the percentage factors used, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating direct material costs by percentage factors. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for this portion of direct material costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

9904.401–62 Exemption.

None for this Standard.

9904.401–63 Effective date.

This Standard is effective as of April 17, 1992.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

9904.402 Cost accounting standard—consistency in allocating costs incurred for the same purpose.

9904.402–10 [Reserved]

9904.402–20 Purpose.

The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a product, contract, or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

9904.402–30 Definitions.

(a) The following are definitions of terms which are prominent in this standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this section requires otherwise.

(1) *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.

(2) *Cost objective* means 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 to processes, products, jobs, capitalized projects, etc.

(3) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both

direct and indirect costs, and in the contractor's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not specifically identified with any final cost objective.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.402–40 Fundamental requirement.

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, 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. Further, 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.

9904.402–50 Techniques for application.

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the contractor will require that he set forth his cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the contractor will set forth in his Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the contractor, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by contractors as a condition of contracting as set forth in subpart 9903.2.

(c) In the event that a contractor has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the contractor's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the contractor's disclosed accounting practices, the contractor may either:

(1) Use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or

(2) Directly assign all such costs to final cost objectives with which they are specifically identified.

In the event the contractor decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

9904.402–60 Illustrations.

(a) Illustrations of costs which are incurred for the same purpose:

(1) Contractor normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, contractor intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose

time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. Contractor's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) Contractor normally allocates planning costs indirectly and allocates this cost to all contracts on the basis of direct labor. A proposal for a new contract requires a disproportionate amount of planning costs. The contractor prefers to continue to allocate planning costs indirectly. In order to equitably allocate the total planning costs, the contractor may use a method for allocating all such costs which would provide an equitable distribution to all final cost objectives. For example, he may use the number of planning documents processed rather than his former allocation base of direct labor. Contractor's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) Contractor normally allocates special tooling costs directly to contracts. The costs of general purpose tooling are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the Contractor's Disclosure Statement, the allocation of general purpose tooling costs from the indirect cost pool to the contract, in addition to the directly allocated special tooling costs, is not considered a violation of the standard.

(2) Contractor proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. Contractor presently has a firefighting force of 10 employees for general protection of the plant. Contractor's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, he wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. He may do so but only on condition that his disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is his practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

9904.402–61 Interpretation.

(a) 9904.402, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose, provides, in 9904.402–40, that '' * * * 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.''

(b) This interpretation deals with the way 9904.402 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9904.402, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the contractor.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the contractor, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

9904.402–62 Exemption.

None for this Standard.

9904.402–63 Effective date.

This Standard is effective as of April 17, 1992.

9904.403 Allocation of home office expenses to segments.

9904.403–10 [Reserved]

9904.403–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to establish criteria for allocation of the expenses of a home office to the segments of the organization based on the beneficial or causal relationship between such expenses and the receiving segments. It provides for:

(1) Identification of expenses for direct allocation to segments to the maximum extent practical;

(2) Accumulation of significant nondirectly allocated expenses into logical and relatively homogeneous pools to be allocated on bases reflecting the relationship of the expenses to the segments concerned; and

(3) Allocation of any remaining or residual home office expenses to all segments.

Appropriate implementation of this Standard will limit the amount of home office expenses classified as residual to the expenses of managing the organization as a whole.

(b) This Standard does not cover the reallocation of a segment's share of home office expenses to contracts and other cost objectives.

9904.403–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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 assignments of cost and the reassignment of a share from an indirect cost pool.

(2) *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.

(3) *Operating revenue* means amounts accrued or charge to customers, clients, and tenants, for the sale of products manufactured or purchased for resale, for services, and for rentals of property held primarily for leasing to others. It includes both reimbursable costs and fees under cost-type contracts and percentage-of-completion sales accruals except that it includes only the fee for management contracts under which the contractor acts essentially as an agent of the Government in the erection or operation of Government-owned facilities. It excludes incidental interest, dividends, royalty, and rental income, and proceeds from the sale of assets used in the business.

(4) *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 Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority of ownership, but over which it exercises control.

(5) *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.

(b) The following modifications of terms defined elsewhere in this Chapter

99 are applicable to this Standard: None.

9904.403–40 Fundamental requirement.

(a)(1) Home office expenses shall be allocated on the basis of the beneficial or causal relationship between supporting and receiving activities. Such expenses shall be allocated directly to segments to the maximum extent practical. Expenses not directly allocated, if significant in amount and in relation to total home office expenses, shall be grouped in logical and homogeneous expense pools and allocated pursuant to paragraph (b) of this subsection. Such allocations shall minimize to the extent practical the amount of expenses which may be categorized as residual (those of managing the organization as a whole). These residual expenses shall be allocated pursuant to paragraph (c) of this subsection.

(2) No segment shall have allocated to it as an indirect cost, either through a homogeneous expense pool, or the residual expense pool, any cost, if other costs incurred for the same purpose have been allocated directly to that or any other segment.

(b) The following subparagraphs provide criteria for allocation of groups of home office expenses.

(1) *Centralized service functions.* Expenses of centralized service functions performed by a home office for its segments shall be allocated to segments on the basis of the service furnished to or received by each segment. Centralized service functions performed by a home office for its segments are considered to consist of specific functions which, but for the existence of a home office, would be performed or acquired by some or all of the segments individually. Examples include centrally performed personnel administration and centralized data processing.

(2) *Staff management of certain specific activities of segments.* The expenses incurred by a home office for staff management or policy guidance functions which are significant in amount and in relation to total home office expenses shall be allocated to segments receiving more than a minimal benefit over a base, or bases, representative of the total specific activity being managed. Staff management or policy guidance to segments is commonly provided in the overall direction or support of the performance of discrete segment activities such as manufacturing, accounting, and engineering (but see paragraph (b)(6) of this subsection).

(3) *Line management of particular segments or groups of segments.* The expense of line management shall be allocated only to the particular segment or group of segments which are being managed or supervised. If more than one segment is managed or supervised, the expense shall be allocated using a base or bases representative of the total activity of such segments. Line management is considered to consist of management or supervision of a segment or group of segments as a whole.

(4) *Central payments or accruals.* Central payments or accruals which are made by a home office on behalf of its segments shall be allocated directly to segments to the extent that all such payments or accruals of a given type or class can be identified specifically with individual segments. Central payments or accruals are those which but for the existence of a number of segments would be accrued or paid by the individual segments. Common examples include centrally paid or accrued pension costs, group insurance costs, State and local income taxes and franchise taxes, and payrolls paid by a home office on behalf of its segments. Any such types of payments or accruals which cannot be identified specifically with individual segments shall be allocated to benefitted segments using an allocation base representative of the factors on which the total payment is based.

(5) *Independent research and development costs and bid and proposal costs.* Independent research and development costs and bid and proposal costs of a home office shall be allocated in accordance with 9904.420.

(6) *Staff management not identifiable with any certain specific activities of segments.* The expenses incurred by a home office for staff management, supervisory, or policy functions, which are not identifiable to specific activities of segments shall be allocated in accordance with paragraph (c) of this subsection as residual expenses.

(c) *Residual expenses.* (1) All home office expenses which are not allocable in accordance with paragraph (a) of this subsection and paragraphs (b)(1) through (b)(5) of this subsection shall be deemed residual expenses. Typical residual expenses are those for the chief executive, the chief financial officer, and any staff which are not identifiable with specific activities of segments. Residual expenses shall be allocated to all segments under a home office by means of a base representative of the total activity of such segments, except where paragraph (c) (2) or (3) of this subsection applies.

(2) Residual expenses shall be allocated pursuant to 9904.403–50(c)(1) if the total amount of such expenses for the contractor's previous fiscal year (excluding any unallowable costs and before eliminating any amounts to be allocated in accordance with paragraph (c)(3) of this subsection) exceeds the amount obtained by applying the following percentage(s) to the aggregate operating revenue of all segments for such previous year: 3.35 percent of the first $100 million; 0.95 percent of the next $200 million; 0.30 percent of the next $2.7 billion; 0.20 percent of all amounts over $3 billion. The determination required by this paragraph for the 1st year the contractor is subject to this Standard shall be based on the pro forma application of this Standard to the home office expenses and aggregate operating revenue for the contractor's previous fiscal year.

(3) Where a particular segment receives significantly more or less benefit from residual expenses than would be reflected by the allocation of such expenses pursuant to paragraph (c) (1) or (2) of this subsection (see 9904.403–50(d)), the Government and the contractor may agree to a special allocation of residual expenses to such segment commensurate with the benefits received. The amount of a special allocation to any segment made pursuant to such an agreement shall be excluded from the pool of residual expenses to be allocated pursuant to paragraph (c) (1) or (2) of this subsection, and such segment's data shall be excluded from the base used to allocate this pool.

9904.403–50 Techniques for application.

(a)(1) Separate expense groupings will ordinarily be required to implement 9904.403–40. The number of groupings will depend primarily on the variety and significance of service and management functions performed by a particular home office. Ordinarily, each service or management function will have to be separately identified for allocation by means of an appropriate allocation technique. However, it is not necessary to identify and allocate different functions separately, if allocation in accordance with the relevant requirements of 9904.403–40(b) can be made using a common allocation base. For example, if the personnel department of a home office provides personnel services for some or all of the segments (a centralized service function) and also established personnel policies for the same segments (a staff management function), the expenses of both functions could be allocated over the same base, such as the number of personnel, and the separate functions do not have to be identified.

(2) Where the expense of a given function is to be allocated by means of a particular allocation base, all segments shall be included in the base unless:

(i) Any excluded segment did not receive significant benefits from, or contribute significantly to the cause of the expense to be allocated and,

(ii) Any included segment did receive significant benefits from or contribute significantly to the cause of the expense in question.

(b)(1) Section 9904.403–60 illustrates various expense pools which may be used together with appropriate allocation bases. The allocation of centralized service functions shall be governed by a hierarchy of preferable allocation techniques which represent beneficial or causal relationships. The preferred representation of such relationships is a measure of the activity of the organization performing the function. Supporting functions are usually labor-oriented, machine-oriented, or space-oriented. Measures of the activities of

such functions ordinarily can be expressed in terms of labor hours, machine hours, or square footage. Accordingly, costs of these functions shall be allocated by use of a rate, such as a rate per labor hour, rate per machine hour or cost per square foot, unless such measures are unavailable or impractical to ascertain. In these latter cases the basis for allocation shall be a measurement of the output of the supporting function. Output is measured in terms of units of end product produced by the supporting function, as for example, number of printed pages for a print shop, number of purchase orders processed by a purchasing department, number of hires by an employment office.

(2) Where neither activity nor output of the supporting function can be practically measured, a surrogate for the beneficial, or causal relationship must be selected. Surrogates used to represent the relationship are generally measures of the activity of the segments receiving the service; for example, for personnel services reasonsable surrogates would be number of personnel, labor hours, or labor dollars of the segments receiving the service. Any surrogate used should be a reasonable measure of the services received and, logically, should vary in proportion to the services received.

(c)(1) Where residual expenses are required to be allocated pursuant to 9904.403–40(c)(2), the three factor formula described below must be used. This formula is considered to result in appropriate allocations of the residual expenses of home offices. It takes into account three broad areas of management concern: The employees of the organization, the business volume, and the capital invested in the organization. The percentage of the residual expenses to be allocated to any segment pursuant to the three factor formula is the arithmetical average of the following three percentages for the same period.

(i) The percentage of the segment's payroll dollars to the total payroll dollars of all segments.

(ii) The percentage of the segment's operating revenue to the total operating revenue of all segments. For this purpose, the operating revenue of any segment shall include amounts charged to other segments and shall be reduced by amounts charged by other segments for purchases.

(iii) The percentage of the average net book value of the sum of the segment's tangible capital assets plus inventories to the total average net book value of such assets of all segments. Property held primarily for leasing to others shall be excluded from the computation. The average net book value shall be the average of the net book value at the beginning of the organization's fiscal year and the net book value at the end of the year.

(d) The following paragraphs provide guidance for implementing the requirements of 9904.403–40(c)(3).

(1) An indication that a segment received significantly less benefit in relation to other segments can arise if a segment, unlike all or most other segments, performs on its own many of the functions included in the residual expense. Another indication may be that, in relation to its size, comparatively little or no costs are allocable to a segment pursuant to 9904.403–40(b) (1) through (5). Evidence of comparatively little communication or interpersonal relations between a home office and a segment, in relation to its size, may also indicate that the segment receives significantly less benefit from residual expenses. Conversely, if the opposite conditions prevail at any segment, a greater allocation than would result from the application of 9904.403–40(c) (1) or (2) may be indicated. This may be the case, for example, if a segment relies heavily on the home office for certain residual functions normally performed by other segments on their own.

(2) Segments which may require special allocations of residual expenses pursuant to 9904.403–40(c)(3) include, but are not limited to foreign subsidiaries, GOCO's, domestic subsidiaries with less than a majority ownership, and joint ventures.

(3) The portion of residual expenses to be allocated to a segment pursuant to 9904.403–40(c)(3) shall be the cost of estimated or recorded efforts devoted to the segments.

(e) Home office functions may be performed by an organization which for

some purposes may not be a part of the legal entity with which the Government has contracted. This situation may arise, for example, in instances where the Government contracts directly with a corporation which is wholly or partly owned by another corporation. In this case, the latter corporation serves as a ''home office,'' and the corporation with which the contract is made is a ''segment'' as those terms are defined and used in this Standard. For purposes of contracts subject to this Standard, the contracting corporation may only accept allocations from the other corporation to the extent that such allocations meet the requirements set forth in this Standard for allocation of home office expenses to segments.

9904.403–60 Illustrations.

(a) The following table lists some typical pools, together with illustrative allocation bases, which could be used in appropriate circumstances:

Home office expense or function	Illustrative allocation bases
Centralized service functions:	
1. Personnel administration	1. Number of personnel, labor hours, payroll, number of hires.
2. Data processing services	2. Machine time, number of reports.
3. Centralized purchasing and subcontracting	3. Number of purchase orders, value of purchases, number of items.
4. Centralized warehousing	4. Square footage, value of material, volume.
5. Company aircraft service	5. Actual or standard rate per hour, mile, passenger mile, or similar unit.
6. Central telephone service	6. Usage costs, number of instruments.

(b) The selection of a base for allocating centralized service functions shall be governed by the criteria established in 9904.403–50(b).

(c) The listed allocation bases in this section are illustrative. Other bases for allocation of home office expenses to segments may be used if they are substantially in accordance with the beneficial or casual relationships outlined in 9904.403–40.

Home office expenses or function	Illustrative allocation bases
Staff management or specific activities:	
1. Personnel management	1. Number of personnel, labor hours, payroll, number of hires.
2. Manufacturing policies, (quality control, industrial engineering, production, scheduling, tooling, inspection and testing, etc.	2. Manufacturing cost input, manufacturing direct labor.
3. Engineering policies	3. Total engineering costs, engineering direct labor, number of drawings.
4. Material/purchasing policies	4. Number of purchase orders, value of purchases.
5. Marketing policies	5. Sales, segment marketing costs.
Central payments or accruals:	
1. Pension expenses	1. Payroll or other factor on which total payment is based.
2. Group insurance expenses	2. Payroll or other factor on which total payment is based.
3. State and local income taxes and franchise taxes	3. Any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction.

9904.403–61 Interpretation.

(a) Questions have arisen as to the requirements of 9904.403, Cost Accounting Standard, Allocation of Home Office Expenses to Segments, for the purpose of allocating State and local income taxes and franchise taxes based on income (hereinafter collectively referred to as income taxes) from a home office of an organization to its segments.

(b) By means of an illustrative allocation base in 9904.403–60, the Standard provides that income taxes are to be allocated by ''any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does

business, as measured by the same factors used to determine taxable income for that jurisdiction.'' This provision contains two essential criteria for the allocation of income taxes from a home office to segments. First, the taxes of any particular jurisdiction are to be allocated only to those segments that do business in the taxing jurisdiction. Second, where there is more than one segment in a taxing jurisdiction, the taxes are to be allocated among those segments on the basis of ''the same factors used to determine the taxable income for that jurisdiction.'' The questions that have arisen relate primarily to whether segment book income or loss is a ''factor'' for this purpose.

(c) Most States tax a fraction of total organization income, rather than the book income of segments that do business within the State. The fraction is calculated pursuant to a formula prescribed by State statute. In these situations the book income or loss of individual segments is not a factor used to determine taxable income for that jurisdiction. Accordingly, in States that tax a fraction of total organization income, rather than the book income of segments within the State, such book income is irrelevant for tax allocation purposes. Therefore, segment book income is to be used as a factor in allocating income tax expense from a home office to segments only where this amount is expressly used by the taxing jurisdiction in computing the income tax.

9904.403–62 Exemption. [Reserved]

9904.403–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.404 Capitalization of tangible assets.

9904.404–10 [Reserved]

9904.404.20 Purpose.

This Standard requires that, for purposes of cost measurement, contractors establish and adhere to policies with respect to capitalization of tangible assets which satisfy criteria set forth herein. Normally, cost measurements are based on the concept of enterprise continuity; this concept implies that major asset acquisitions will be capitalized, so that the cost applicable to current and future accounting periods can be allocated to cost objectives of those periods. A capitalization policy in accordance with this Standard will facilitate measurement of costs consistently over time.

9904.404–30 Definitions.

(a) The following are definitions of terms which are prominent in this standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Asset accountability unit* means a tangible capital asset which is a component of plant and equipment that is capitalized when acquired or whose replacement is capitalized when the unit is removed, transferred, sold, abandoned, demolished, or otherwise disposed of.

(2) *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.

(3) *Repairs and maintenance* generally means the total endeavor to obtain the

expected service during the life of tangible capital assets. Maintenance is the regularly recurring activity of keeping assets in normal or expected operating condition while repair is the activity of putting them back into such condition.

(4) *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 service it yields.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.404–40 Fundamental requirement.

(a) The acquisition cost of tangible capital assets shall be capitalized. Capitalization shall be based upon a written policy that is reasonable and consistently applied.

(b) The contractor's policy shall designate economic and physical characteristics for capitalization of tangible assets.

(1) The contractor's policy shall designate a minimum service life criterion, which shall not exceed 2 years, but which may be a shorter period. The policy shall also designate a minimum acquisition cost criterion which shall not exceed $5,000, but which may be a smaller amount.

(2) The contractor's policy may designate other specific characteristics which are pertinent to his capitalization policy decisions (e.g., class of asset, physical size, identifiability and controllability, the extent of integration or independence of constituent units).

(3) The contractor's policy shall provide for identification of asset accountability units to the maximum extent practical.

(4) The contractor's policy may designate higher minimum dollar limitations for original complement of low cost equipment and for betterments and improvements than the limitation established in accordance with paragraph (b)(1) of this subsection, provided such higher limitations are reasonable in the contractor's circumstances.

(c) Tangible assets shall be capitalized when both of the criteria in the contractor's policy as required in paragraph (b)(1) of this subsection are met, except that assets described in subparagraph (b)(4) of this subsection shall be capitalized in accordance with the criteria established in accordance with that paragraph.

(d) Costs incurred subsequent to the acquisition of a tangible capital asset which result in extending the life or increasing the productivity of that asset (e.g., betterments and improvements) and which meet the contractor's established criteria for capitalization shall be capitalized with appropriate accounting for replaced asset accountability units. However, costs incurred for repairs and maintenace to a tangible capital asset which either restore the asset to, or maintain it at, its normal or expected service life or production capacity shall be treated as costs of the current period.

[57 FR 14153, Apr. 17, 1992, as amended at 61 FR 5522, Feb. 13, 1996]

9904.404–50 Techniques for application.

(a) The cost to acquire a tangible capital asset includes the purchase price of the asset and costs necessary to prepare the asset for use.

(1) The purchase price of an asset shall be adjusted to the extent practical by premiums and extra charges paid or discounts and credits received which properly reflect an adjustment in the purchase price.

(i) Purchase price is the consideration given in exchange for an asset and is determined by cash paid, or to the extent payment is not made in cash, in an amount equivalent to what would be the cash price basis. Where this amount is not available, the purchase price is determined by the current value of the consideration given in exchange for the asset. For example, current value for a credit instrument is the amount immediately required to settle the obligation or the amount of money which might have been raised directly through the use of the same instrument employed in making the credit purchase. The current value of an equity security is its market value.

Market value is the current or prevailing price of the security as indicated by recent market quotations. If such values are unavailable or not appropriate (thin market, volatile price movement, etc.), an acceptable alternative is the fair value of the asset acquired.

(ii) Donated assets which, at the time of receipt, meet the contractor's criteria for capitalization shall be capitalized at their fair value at that time.

(2) Costs necessary to prepare the asset for use include the cost of placing the asset in location and bringing the asset to a condition necessary for normal or expected use. Where material in amount, such costs, including initial inspection and testing, installation and similar expenses, shall be capitalized.

(b) Tangible capital assets constructed or fabricated by a contractor for its own use shall be capitalized at amounts which include all indirect costs properly allocable to such assets. This requires the capitalization of general and administrative expenses when such expenses are identifiable with the constructed asset and are material in amount (e.g., when the in-house construction effort requires planning, supervisory, or other significant effort by officers or other personnel whose salaries are regularly charged to general and administrative expenses). When the constructed assets are identical with or similar to the contractor's regular product, such assets shall be capitalized at amounts which include a full share of indirect costs.

(c) In circumstances where the acquisition by purchase or donation of previously used tangible capital assets is not an arm's length transaction, acquisition cost shall be limited to the capitalized cost of the asset to the owner who last acquired the asset through an arm's-length transaction, reduced by depreciation charges from date of that acquisition to date of gift or sale.

(d) The capitalized values of tangible capital assets acquired in a business combination, accounted for under the ''purchase method'' of accounting, shall be assigned to these assets as follows:

(1) All the tangible capital assets of the acquired company that during the most recent cost accounting period prior to a business combination generated either depreciation expense or cost of money charges that were allocated to Federal government contracts or subcontracts negotiated on the basis of cost, shall be capitalized by the buyer at the net book value(s) of the asset(s) as reported by the seller at the time of the transaction.

(2) All the tangible capital asset(s) of the acquired company that during the most recent cost accounting period prior to a business combination did not generate either depreciation expense or cost of money charges that were allocated to Federal government contracts or subcontracts negotiated on the basis of cost, shall be assigned a portion of the cost of the acquired company not to exceed their fair value(s) at the date of acquisition. When the fair value of identifiable acquired assets less liabilities assumed exceeds the purchase price of the acquired company in an acquisition under the ''purchase method,'' the value otherwise assignable to tangible capital assets shall be reduced by a proportionate part of the excess.

(e) Under the ''pooling of interest method'' of accounting for business combinations, the values established for tangible captial assets for financial accounting shall be the values used for determining the cost of such assets.

(f) Asset accountability units shall be identified and separately capitalized at the time the assets are acquired. However, whether or not the contractor identifies and separately capitalizes a unit initially, the contractor shall remove the unit from the asset accounts when it is disposed of and, if replaced, its replacement shall be capitalized.

[57 FR 14153, Apr. 17, 1992, as amended at 61 FR 5523, Feb. 13, 1996]

9904.404–60 Illustrations.

(a) *Illustrations of costs which must be capitalized.* (1) Contractor has an established policy of capitalizing tangible assets which have a service life of more than 1 year and a cost of $2,000. The contractor's policy must be modified to conform to the $1,500 policy limitation on minimum acquisition cost established by the Standard.

(i) Contractor acquires a tangible capital asset with a life of 18 months of a cost of $1,700. The Standard requires

that the asset be capitalized in compliance with contractor's policy as to service life.

(ii) Contractor acquires a tangible asset with a life of 18 months at a cost of $900. The asset need not be capitalized unless the contractor's revised policy establishes a minimum cost criterion below $900.

(2) Contractor has an established policy of capitalizing tangible assets which have a service life of more than 1 year and a cost of $250. Contractor acquires a tangible asset with a life of 18 months and a cost of $300. The Standard requires that, based upon contractor's policy, the asset be capitalized.

(3) Contractor establishes a major new production facility. In the process, a number of large and small items of equipment were acquired to outfit it. The contractor has an established policy of capitalizing individual items of tangible assets which have a service life of over 1 year and a cost of $500, and all items meeting these requirements were capitalized. In addition, the contractor's policy requires capitalization of an original complement which has a service life of over 1 year and a cost of $5,000. Items of durable equipment acquired for the production facility costing less than $500 each aggregated $50,000. Based upon the contractor's policy, the durable equipment items must be capitalized as the original complement of low cost equipment. (The concept of original complement applies to such items as books in a new library, impact wrenches in a new factory, work benches and racks in a new production facility, or furniture and fixtures in a new office building.)

(4) Contractor has an established policy for treating its heavy presses and their power supplies as separate asset accountability units. A power supply is replaced during the service life of the related press. The Standard requires that, based upon the contractor's policy, the new power supply be capitalized with appropriate accounting for the replaced unit.

(b) *Illustrations of costs which need not be capitalized.* (1) The contractor has an established policy of capitalizing tangible assets which have a service life of 2 years and a cost of $500. The contractor acquires an asset with a useful life of 18 months and a cost of $5,000. The tangible asset should be expensed because it does not meet the 2-year criterion.

(2) The contractor establishes a new assembly line. In outfitting the line, the contractor acquires $5,000 of small tools. On similar assembly lines under similar conditions, the original complement of small tools was expensed because the complement was replaced annually as a result of loss, pilferage, breakage, and physical wear and tear. Because the unit of original complement does not meet the contractor's service life criterion for capitalization (1 year), the small tools may be expensed.

9904.404–61 Interpretation. [Reserved]

9904.404–62 Exemption.

None for this Standard.

9904.404–63 Effective date.

(a) This Standard is effective April 15, 1996.

(b) This Standard shall be applied beginning with the contractor's next full cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.404 in effect prior to April 15, 1996, until this Standard, effective April 15, 1996, becomes applicable after the receipt of a contract or subcontract to which this revised Standard applies.

[61 FR 5523, Feb. 13, 1996]

9904.405 Accounting for unallowable costs.

9904.405–10 [Reserved]

9904.405–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering:

(1) Identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and

(2) The cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs.

The Standard is predicated on the proposition that costs incurred in carrying on the activities of an enterprise—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

9904.405–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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.

(2) *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.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, 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.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.405–40 Fundamental requirement.

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of 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) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

9904.405–50 Techniques for application.

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for the indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b)(1) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include:

(i) The segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account,

(ii) The development and maintenance of separate accounting records or workpapers, or

(iii) The use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs.

(2) Contractors may satisfy the visibility requirements for estimated costs either:

(i) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or

(ii) By description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable cost is not required in circumstances where, based upon considerations of materiality, the Government and the contractor reach agreement on an alternate method that satisfies the purpose of the Standard.

9904.405–60 Illustrations.

(a) An auditor recommends disallowance of certain direct labor and direct materials costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the contracting officer's decision, the contractor must clearly identify the disallowed direct labor and direct material costs in his accounting records and reports covering any subsequent submission which includes such costs. Also, if the contractor's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., he must include the disallowed direct

labor and material costs in his allocation base for such pool. Had the contracting officer's decision been against the auditor, the contractor would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) A contractor incurs, and separately identifies, as a part of his manufacturing overhead, certain costs which are expressly unallowable under the existing and currently effective regulations. If manufacturing overhead is regularly a part of the contractor's base for allocation of general and administrative (G&A) or other indirect expenses, the contractor must allocate the G&A or other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable manufacturing overhead costs.

(c) An auditor recommends disallowance of the total direct indirect costs attributable to an organizational planning activity. The contractor claims that the total of these activity costs are allowable under the Federal Acquisition Regulation (FAR) as ''Economic planning costs'' (48 CFR 31.205–12); the auditor contends that they constitute ''Organization costs'' (48 CFR 31.205–27) and therefore are unallowable. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the FAR. Following receipt of the contracting officer's decision, the contractor must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the contractor's contention, the costs questioned by the auditor would have been allowable ''Economic planning costs,'' and the contractor would not have been required to provide special identification.

(d) A defense contractor was engaged in a program of expansion and diversification of corporate activities. This involved internal corporate reorganization, as well as mergers and acquisitions. All costs of this activity were charged by the contractor as corporate or segment general and administrative (G&A) expense. In the contractor's proposals for final Segment G&A rates (including corporate home office allocations) to be applied in determining allowable costs of its defense contracts subject to 48 CFR part 31, the contractor identified and excluded the expressly unallowable costs (as listed in 48 CFR 31.205–12) incurred for incorporation fees and for charges for special services of outside attorneys, accountants, promoters, and consultants. In addition, during the course of negotiation of interim bidding and billing G&A rates, the contractor agreed to classify as unallowable various in-house costs incurred for the expansion program, and various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the contractor and the contracting officers' authorized representatives, interim G&A rates were established, based on the net balance of allowable G&A costs. Application of the rates negotiated to proposals, and on an interim basis to billings, for covered contracts constitutes compliance with the Standard.

(e) An official of a company, whose salary, travel, and subsistence expenses are charged regularly as general and administrative (G&A) expenses, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense, and is separately identified by the contractor. The contractor does not regularly include his G&A expenses in any indirect-expense allocation base. In these circumstances, the official's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the official's regular duties and responsibilities on which his salary was based, no part of the official's salary would be required to be identified as a

directly associated cost of the unallowable entertainment expense.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992; 57 FR 43776, Sept. 22, 1992]

9904.405–61 Interpretation. [Reserved]

9904.405–62 Exemption.

None for this Standard.

9904.405–63 Effective date.

This Standard is effective as of April 17, 1992.

9904.406 Cost accounting standard—cost accounting period.

9904.406–10 [Reserved]

9904.406–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

9904.406–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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.

(2) *Cost objective* means 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.

(3) *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.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modification of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.406–40 Fundamental requirement.

(a) A contractor shall use this fiscal year as his cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9904.406–50(a).

(2) An annual period other than the fiscal year may, as provided in 9904.406–50(d), be used as the cost accounting period if its use is an established practice of the contractor.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(4) Where a contractor's cost accounting period is different from the reporting period used for Federal income tax reporting purposes, the latter may be used for such reporting.

(b) A contractor shall follow consistent practices in his selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 9904.406–50(e).

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

9904.406–50 Techniques for application.

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is:

(1) Material in amount,

(2) Accumulated in a separate indirect cost pool, and

(3) Allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 9904.406–40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as taxes, insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the contractor's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the contractor's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) A contractor may, upon mutual agreement with the Government, use as his cost accounting period a fixed annual period other than his fiscal year, if the use of such a period is an established practice of the contractor and is consistently used for managing and controlling the business, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the contractor,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f) When a transitional cost accounting period is required under the provisions of 9904.406–40(a)(3), the contractor may select any one of the following:

(1) The period, less than a year in length, extending from the end of his previous cost accounting period to the beginning of his next regular cost accounting period,

(2) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the previous cost accounting period, or

(3) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the next regular cost accounting period.

A change in the contractor's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with paragraph (a)(4) (ii) or (iii) of the contract clause set out at 9903.201–4(a).

9904.406–60 Illustrations.

(a) A contractor allocates general management expenses on the basis of total cost input. In a proposal for a covered negotiated fixed-price contract, he estimates the allocable expenses based solely on the estimated amount of the general management expense pool and the amount of the total cost input base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) A contractor whose cost accounting period is the calendar year, installs

a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in a separate indirect cost pool, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) A contractor changes his fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, he has a 5-month transitional ''fiscal year.'' The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9904.406–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as his regular cost accounting period. The change in his cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with paragraph (a)(4) (ii) or (iii) of the contract clause at 9903.201–4(a).

(d) Financial reports to stockholders are made on a calendar year basis for the entire contractor corporation. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a ''model year.'' The contracting parties agree to use a ''model year'' and they agree to overhead rates on the ''model year'' basis. They also agree on a technique for prorating fiscal year assignment of corporate home office expenses between model years. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a ''vacation year'' which ends September 30 each year. Vacation expenses are estimated uniformly during each ''vacation year.'' Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9904.406–50(b).

9904.406–61 Interpretation.

(a) Questions have arisen as to the allocation and period cost assignment of certain contract costs (primarily under defense contracts and subcontracts). This section deals primarily with the assignment of restructuring costs to cost accounting periods. In essence, it clarifies whether restructuring costs are to be treated as an expense of the current period or as a deferred charge that is subsequently amortized over future periods.

(b) *Restructuring costs* as used in this Interpretation means costs that are incurred after an entity decides to make a significant nonrecurring change in its business operations or structure in order to reduce overall cost levels in future periods through work force reductions, the elimination of selected operations, functions or activities, and/or the combination of ongoing operations, including plant relocations. Restructuring activities do not include ongoing routine changes an entity makes in its business operations or organizational structure. Restructuring costs are comprised both of direct and indirect costs associated with contractor restructuring activities taken after a business combination is effected or after a decision is made to execute a significant restructuring event not related to a business combination. Typical categories of costs that have been included in the past and may be considered in the future as restructuring charges include severance pay, early retirement incentives, retraining, employee relocation, lease cancellation, asset disposition and write-offs, and relocation and rearrangement of plant and equipment. Restructuring costs do not include the cost of such activities when they do not relate either to business combinations or to other significant nonrecurring restructuring decisions.

(c) The costs of betterments or improvements of capital assets that result from restructuring activities shall

be capitalized and depreciated in accordance with the provisions of 9904.404 and 9904.409.

(d) When a procuring agency imposes a net savings requirement for the payment of restructuring costs, the contractor shall submit data specifying

(1) The estimated restructuring costs by period,

(2) The estimated restructuring savings by period (if applicable), and

(3) The cost accounting practices by which such costs shall be allocated to cost objectives.

(e) Contractor restructuring costs defined pursuant to this section may be accumulated as deferred cost, and subsequently amortized, over a period during which the benefits of restructuring are expected to accrue. However, a contractor proposal to expense restructuring costs for a specific event in a current period is also acceptable when the Contracting Officer agrees that such treatment will result in a more equitable assignment of costs in the circumstances.

(f) If a contractor incurs restructuring costs but does not have an established or disclosed cost accounting practice covering such costs, the deferral of such restructuring costs may be treated as the initial adoption of a cost accounting practice (see 9903.302–2(a)). If a contractor incurs restructuring costs but does have an existing established or disclosed cost accounting practice that does not provide for deferring such costs, any resulting change in cost accounting practice to defer such costs may be presumed to be desirable and not detrimental to the interests of the Government (see 9903.201–6). Changes in cost accounting practices for restructuring costs shall be subject to disclosure statement revision requirements (see 9903.202–3), if applicable.

(g) Business changes giving rise to restructuring costs may result in changes in cost accounting practice (see 9903.302). If a contract price or cost allowance is affected by such changes in cost accounting practice, adjustments shall be made in accordance with subparagraph (a)(4) of the CAS clause (see 9903.201–4(a)(2), 9903.201–4(c)(2) and 9903.201–4(e)(2)).

(h) The amortization period for deferred restructuring costs shall not exceed five years. The straight-line method of amortization should normally be used, unless another method results in a more appropriate matching of cost to expected benefits.

(i) Restructuring costs that are deferred shall not be included in the computation to determine facilities capital cost of money (see 9904.414). Specifically, deferred charges are not tangible or intangible capital assets and therefore are excluded from the facilities capital values for the computation of facilities capital cost of money.

(j) Restructuring costs incurred at a home office level shall be treated in accordance with the provisions of 9904.403. Restructuring costs incurred at the segment level that benefit more than one segment should be allocated to the home office and treated as home office expense pursuant to 9904.403. Restructuring costs incurred at the segment level that benefit only that segment shall be treated in accordance with the provisions of 9904.418. If one or more indirect cost pools do not comply with the homogeneity requirements of 9904.418 due to the inclusion of the costs of restructuring activities, then the restructuring costs shall be accumulated in indirect cost pools that are distinct from the contractor's ongoing indirect cost pools.

(k) This section is applicable to contractor ''restructuring costs'' paid or approved on or after August 15, 1994.

[62 FR 31308, June 6, 1997]

9904.406–62 Exemption.

None for this Standard.

9904.406–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.407 Use of standard costs for direct material and direct labor.

9904.407–10 [Reserved]

9904.407–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to provide criteria under which standard costs may be used for estimating, accumulating, and reporting costs of direct material and direct labor; and to provide criteria relating to the establishment of standards, accumulation of standard costs, and accumulation and disposition of variances from standard costs. Consistent application of these criteria where standard costs are in use will improve cost measurement and cost assignment.

(b) This Cost Accounting Standard is not intended to cover the use of pre-established measures solely for estimating.

9904.407–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Labor cost at standard* means a pre-established measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

(2) *Labor-rate standard* means a pre-established measure, expressed in monetary terms, of the price of labor.

(3) *Labor-time standard* means a pre-established measure, expressed in temporal terms, of the quantity of labor.

(4) *Material cost at standard* means a pre-established measure of the material element of cost, computed by multiplying material-price standard by material-quantity standard.

(5) *Material-price standard* means a pre-established measure, expressed in monetary terms, of the price of material.

(6) *Material-quantity standard* means a pre-established measure, expressed in physical terms, of the quantity of material.

(7) *Production unit* means a grouping of activities which either uses homogeneous inputs of direct material and direct labor or yields homogeneous outputs such that the costs or statistics related to these homogeneous inputs or outputs are appropriate as bases for allocating variances.

(8) *Standard cost* means any cost computed with the use of pre-established measures.

(9) *Variance* means the difference between a pre-established measure and an actual measure.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) Actual cost. An amount determined on the basis of cost incurred.

(2) [Reserved]

9904.407–40 Fundamental requirement.

Standard costs may be used for estimating, accumulating, and reporting costs of direct material and direct labor only when all of the following criteria are met:

(a) Standard costs are entered into the books of account.

(b) Standard costs and related variances are appropriately accounted for at the level of the production unit.

(c) Practices with respect to the setting and revising of standards, use of standard costs, and disposition of variances are stated in writing and are consistently followed.

9904.407–50 Techniques for application.

(a)(1) A contractor's written statement of practices with respect to standards shall include the bases and criteria (such as engineering studies, experience, or other supporting data) used in setting and revising standards; the period during which standards are to remain effective; the level (such as ideal or realistic) at which material-quantity standards and labor-time standards are set; and conditions (such as those expected to prevail at the beginning of a period) which material-price standards and labor-rate standards are designed to reflect.

(2) Where only either the material price or material quantity is set at standard, with the other component stated at actual, the result of the multiplication shall be treated as material

cost at standard. Similarly, where only either the labor rate or labor time is set at standard, with the other component stated at actual, the result of the multiplication shall be treated as labor cost at standard.

(3) A labor-rate standard may be set to cover a category of direct labor only if the functions performed within that category are not materially disparate and the employees involved are interchangeable with respect to the functions performed.

(4) A labor-rate standard may be set to cover a group of direct labor workers who perform disparate functions only under either one of the following conditions:

(i) Where that group of workers all work in a single production unit yielding homogeneous outputs (in this case, the same labor-rate standard shall be applied to each worker in that group).

(ii) Where that group of workers, in the performance of their respective functions, forms an integral team (in this case, a labor-rate standard shall be set for each integral team).

(b)(1) Material-price standards may be used and their related variances may be recognized either at the time purchases of material are entered into the books of account, or at the time material cost is allocated to production units.

(2) Where material-price standards are used and related variances are recognized at the time purchases of material are entered into the books of account, they shall be accumulated separately by homogeneous groupings of material. Examples of homogeneous groupings of material are:

(i) Where prices of all items in that grouping of material are expected to fluctuate in the same direction and at substantially the same rate, or

(ii) Where items in that grouping of material are held for use in a single production unit yielding homogeneous outputs.

(3) Where material-price variances are recognized at the time purchases of material are entered into the books of account, variances of each homogeneous grouping of material shall be allocated (except as provided in paragraph (b)(4) of this subsection), at least annually, to items in purchased-items inventory and to production units receiving items from that homogeneous grouping of material, in accordance with either one of the following practices, which shall be consistently followed:

(i) Items in purchased-items inventory of a homogeneous grouping of material are adjusted from standard cost to actual cost; the balance of the material-price variance, after reflecting these adjustments, shall be allocated to production units on the basis of the total of standard cost of material received from that homogeneous grouping of material by each of the production units; or

(ii) Items, at standard cost, in purchased-items inventory of a homogeneous grouping of material, are treated, collectively, as a production unit; the material-price variance shall be allocated to production units on the basis of standard cost of material received from that homogeneous grouping of material by each of the production units.

(4) Where material-price variances are recognized at the time purchases of material are entered into the books of account, variances of each homogeneous grouping of material which are insignificant may be included in appropriate indirect cost pools for allocation to applicable cost objectives.

(5) Where a material-price variance is allocated to a production unit in accordance with paragraph (b)(3) of this subsection, it may be combined with material-quantity variance into one material-cost variance for that production unit. A separate material-cost variance shall be accumulated for each production unit.

(6) Where material-price variances are recognized at the time material cost is allocated to production units, these variances and material-quantity variances may be combined into one material-cost variance account.

(c) Labor-cost variances shall be recognized at the time labor cost is introduced into production units. Labor-rate variances and labor-time variances may be combined into one labor-cost variance account. A separate labor-cost variance shall be accumulated for each production unit.

(d) A contractor's established practice with respect to the disposition of variances accumulated by production unit shall be in accordance with one of the following subparagraphs:

(1) Variances are allocated to cost objectives (including ending in-process inventory) at least annually. Where a variance related to material is allocated, the allocation shall be on the basis of the material cost at standard, or, where outputs are homogeneous, on the basis of units of output. Similarly, where a variance related to labor is allocated, the allocation shall be on the basis of the labor cost at standard or labor hours at standard or, where outputs are homogeneous, on the basis of units of output; or

(2) Variances which are immaterial may be included in appropriate indirect cost pools for allocation to applicable cost objectives.

(e) Where variances applicable to covered contracts are allocated by memorandum worksheet adjustments rather than in the books of account, the bases used for adjustment shall be in accordance with those stated in paragraph (b)(3) and paragraph (d) of this subsection.

9904.407–60 Illustrations.

(a) Contractor A's written practice is to set his material-price standard for an item on the basis of average purchase prices expected to prevail during the calendar year. For that item whose usage from month to month is stable, a purchase contract is generally signed on May 1 of each year for a 1-year commitment. The current purchase contract calls for a purchase price of $3 per pound; an increase of 5 percent, or 15¢ per pound, has been announced by the vendor when the new purchase contract comes into effect next May. Contractor A sets his material-price standard for this item at $3.10 per pound for the year ([$3.00×4+$3.15×8]÷ 12). Since Contractor A sets his material-price standard in accordance with his written practice, he complies with provisions of 9904.407–40(c) of this Cost Accounting Standard.

(b) Contractor B accumulates, in one account, labor cost at standard for a department in which several categories of direct labor of disparate functions, in different combinations, are used in the manufacture of various dissimilar outputs of the department. Contractor B's department is not a production unit as defined in 9904.407–30(a)(7) of this Cost Accounting Standard. Modifying his practice so as to comply with the definition of production unit in 9904.407–30(a)(7), he could accumulate the standard costs and variances separately,

(1) For each of the several categories of direct labor, or

(2) For each of several subdepartments, with homogeneous output for each of the subdepartments.

(c) Contractor C allocates variances at the end of each month. During the month of March, a production unit has accumulated the following data with respect to labor:

	Labor hours at standard	Labor dollars at standard	Labor cost variance
Balance, March 1	5,000	$25,000	$2,000
Additions in March	15,000	75,000	5,000
Total	20,000	100,000	7,000
Transfers-out in March	8,000	40,000	.....
Balance, March 31	12,000	60,000	.....

Using labor hours at standard as the base, Contractor C establishes a labor-cost variance rate of $.35 per standard labor hour ($7,000 ÷ 20,000), and deducts $2,800 ($.35 × 8,000) from the labor-cost variance account, leaving a balance of $4,200 ($7,000–$2,800). Contractor C's practice complies with provisions of 9904.407–50(d)(1) of this Cost Accounting Standard.

(d) Contractor D, who uses materials the prices of which are expected to fluctuate at different rates, recognizes material-price variances at the time purchases of material are entered into the books of account. He maintains one purchase-price variance account for the whole plant. Purchased items are requisitioned by various production units in the plant. Since prices of material are expected to fluctuate at different rates, this plant-wide grouping does not constitute a homogeneous grouping of material. Contractor D's practice does not comply with provisions of 9904.407–50(b)(2) of this Cost Accounting Standard. However, if he would maintain several purchased-

items inventory accounts, each representing a homogeneous grouping of material, and maintain a material-price variance account for each of these homogeneous groupings of material, Contractor D's practice would comply with 9904.407–50(b)(2) of this Cost Accounting Standard.

(e)(1) Contractor E recognizes material-price variances at the time purchases of material are entered into the books of account and allocates variances at the end of each month. During the month of May, a homogeneous grouping of material has accumulated the following data:

	Material cost at standard	Material price variance
Inventory, May 1	$150,000	$20,000
Additions in May	1,850,000	120,000
Total	2,000,000	140,000
Requisitions:		
Production Unit 1	900,000	
Production Unit 2	450,000	
Production Unit 3	300,000	
Production Unit 4	150,000	
Inventory, May 31	200,000	

(2) Contractor E establishes a material-price variance rate of 7% ($140,000 ÷ $2,000,000) and allocates as follows:

	Material cost at standard	Material price variance rate (%)	Material price variance allocation
Production Unit 1	$900,000	7	$63,000
Production Unit 2	450,000	7	31,500
Production Unit 3	300,000	7	21,000
Production Unit 4	150,000	7	10,500
Ending inventory of homogeneous grouping of material	200,000	7	14,000
Total	2,000,000		140,000

Contractor E's practice complies with provisions of 9904.407–50(b)(3)(ii) of this Cost Accounting Standard.

(f)(1) Contractor F makes year-end adjustments for variances attributable to covered contracts. During the year just ended, a covered contract was processed in four production units, each with homogeneous outputs. Data with respect to output and to labor of each of the four production units are as follows:

Production unit	Total units of output	Total units used by the covered contract	Total labor costs at standard	Total labor-cost variance
1	100,000	10,000	$400,000	$20,000
2	30,000	6,000	900,000	30,000
3	20,000	5,000	600,000	10,000
4	10,000	4,000	500,000	20,000

(2) Since the outputs of each production unit are homogeneous, Contractor F uses the units of output as the basis of making memorandum worksheet adjustments concerning applicable variances, and establishes the following figures:

	Labor-cost variance per unit of unit	Units used by the covered contract	Labor-cost variance attributable to the covered contract
Production Unit 1	$0.20	10,000	$2,000
Production Unit 2	1.00	6.000	6.000
Production Unit 3	.50	5,000	2,500
Production Unit 4	2.00	4,000	8,000
Total labor-cost variance attributable to the covered contract			18,500

(3) Contractor F makes a year-end adjustment of $18,500 as the labor-cost variances attributable to the covered contract. Contractor F's practice complies with provisions of 9904.407–50(e) of this Cost Accounting Standard.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

9904.407–61 Interpretation. [Reserved]

9904.407–62 Exemption.

None for this Standard.

9904.407–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.408 Accounting for costs of compensated personal absence.

9904.408–10 [Reserved]

9904.408–20 Purpose.

The purpose of this Standard is to improve, and provide uniformity in, the measurement of costs of vacation, sick leave, holiday, and other compensated personal absence for a cost accounting period, and thereby increase the probability that the measured costs are allocated to the proper cost objectives.

9904.408–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Compensated personal absence* means any absence from work for reasons such as illness, vacation, holidays, jury duty or 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.

(2) *Entitlement* means an employee's right, whether conditional or unconditional, to receive a determinable amount of compensated personal absence, or pay in lieu thereof.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9904.408–40 Fundamental requirement.

(a) The costs of compensated personal absence shall be assigned to the cost accounting period or periods in which the entitlement was earned.

(b) The costs of compensated personal absence for an entire cost accounting period shall be allocated prorata on an annual basis among the final cost objectives of that period.

9904.408–50 Techniques for application.

(a) *Determinations.* Each plan or custom for compensated personal absence shall be considered separately in determining when entitlement is earned. If a plan or custom is changed or a new plan or custom is adopted, then a new determination shall be made beginning with the first cost accounting period to which such new or changed plan or custom applies.

(b) *Measurement of entitlement.* (1) For purposes of compliance with 9904.408–40(a), compensated personal absence is earned at the same time and in the same amount as the employer becomes liable to compensate the employee for such absence if the employer terminates the employee's employment for lack of work or other reasons not involving disciplinary action, in accordance with a plan or custom of the employer. Where a new employee must complete a probationary period before the employer becomes liable, the employer may nonetheless treat such service as creating entitlement in any computations required by this Standard, provided that he does so consistently.

(2) Where a plan or custom provides for entitlement to be determined as of the first calendar day or the first business day of a cost accounting period based on service in the preceding cost accounting period, the entitlement shall be considered to have been earned, and the employer's liability to have arisen, as of the close of the preceding cost accounting period.

(3) In the absence of a determinable liability, in accordance with paragraph (b)(1) of this subsection, compensated personal absence will be considered to be earned only in the cost accounting period in which it is paid.

(c) *Determination of employer's liability.* In computing the cost of compensated personal absence, the computation shall give effect to the employer's liability in accordance with the following paragraphs:

(1) The estimated liability shall include all earned entitlement to compensated personal absence which exists at the time the liability is determined, in accordance with paragraph (b) of this subsection.

(2) The estimated liability shall be reduced to allow for anticipated nonutilization, if material.

(3) The liability shall be estimated consistently either in terms of current

or of anticipated wage rates. Estimates may be made with respect to individual employees, but such individual estimates shall not be required if the total cost with respect to all employees in the plan can be estimated with reasonable accuracy by the use of sample data, experience or other appropriate means.

(d) *Adjustments.* (1) The estimate of the employer's liability for compensated personal absence at the beginning of the first cost accounting period for which a contractor must comply with this standard shall be based on the contractor's plan or custom applicable to that period, notwithstanding that some part of that liability has not previously been recognized for contract costing purposes. Any excess of the amount of the liability as determined in accordance with paragraph (c) of this subsection over the corresponding amount of the liability as determined in accordance with the contractor's previous practice shall be held in suspense and accounted for as described in subparagraph (d)(3) of this subsection.

(2) If a plan or custom is changed or a new plan or custom is adopted, and the new determination made in accordance with paragraph (a) of this subsection results in an increase in the estimate of the employer's liability for compensated personal absence at the beginning of the first cost accounting period for which the new plan is effective over the estimate made in accordance with the contractor's prior practice, then the amount of such increase shall be held in suspense and accounted for as described in paragraph (d)(3) of this subsection.

(3) At the close of each cost accounting period, the amount held in suspense shall be reduced by the excess of the amount held in suspense at the beginning of the cost accounting period over the employer's liability (as estimated in accordance with paragraph (c) of this subsection) at the end of that cost accounting period. The cost of compensated personal absence assigned to that cost accounting period shall be increased by the amount of the excess.

(e) *Allocations.* Except where the use of a longer or shorter period is permitted by the provisions of the Cost Accounting Standard on Cost Accounting Period (9904.406), the cost of compensated personal absence shall be allocated to cost objectives on a pro-rata basis which reflects the total of such costs and the total of the allocation base for the entire cost accounting period. However, this provision shall not preclude revisions to an allocation rate during a cost accounting period based on revised estimates of period totals.

9904.408–60 Illustrations.

(a) Company A's vacation plan provides that on the anniversary of each employee's hiring date, that employee shall become eligible to receive a 2-week vacation with pay. Vacation entitlement must be used within 2 years or forfeited. An employee who leaves the company voluntarily will be paid for any remaining unused vacation entitlement which was earned through the employee's last anniversary date. An employee who is laid off for lack of work will also be paid a pro-rata vacation allowance for service since the employee's last anniversary date. Company A accrues vacation costs each month based on an estimate of the anniversary years which will be completed in that month. At the end of its cost accounting period, Company A adjusts its estimated liability to agree with its actual liability for completed years of service on an individual employee basis.

(1) In order to comply with 9904.408–50(c), Company A must increase its estimated liability for vacation pay at all times to include the estimated additional amount which would be payable to employees in the event of layoff. The additional liability may be calculated on an individual employee basis or it may be estimated for the employees as a group by the use of sample or historical data.

(2) The following illustrates one method of estimating Company A's liability at the end of its cost accounting period, December 31, with respect to individual employees, in accordance with 9904.408–50(c).

John Doe, Anniversary date July 10:

Unused entitlement resulting from completed service years, 24 hrs. at $5	$120

Full months of service since anniversary, 5:	
Pro-rata entitlement on lay-off=80 hrs.×5/12=33.3 hrs. at 15 ...	167
Total	287
Less estimated allowance for forfeitures, 3½ percent	10
Net liability	277

(b) Company B has a vacation plan similar to Company A's, but Company B does not pay pro-rata vacation pay on lay-off for service since the last anniversary date. Company B must include in its estimate of its liability at the end of its cost accounting period only that unused vacation entitlement which results from completed years of service, with allowance for forfeitures if material.

(c) Company C's sick leave plan provides that an employee will accumulate one-half day of sick leave entitlement for each full month of service. Sick leave entitlement may be accumulated without limit, but an employee is paid for sick leave only during actual illness; the Company does not pay for unused sick leave on lay-off. Despite the fact that Company C might be able to estimate the amount which will be paid for sick leave in a future cost accounting period with a high degree of accuracy, it has no liability for payment for unused sick leave entitlement in the event of lay-off. Therefore, in accordance with 9904.408–50(b)(3), it must assign to each cost accounting period only the costs of sick leave which it pays in that period.

(d) Company D's vacation plan provides that on July 1, each employee who has been employed by the Company for at least 1 year shall be entitled to 2 weeks of vacation. All vacation must be taken between July 1 and September 30. An employee who terminates after September 30 and before July 1 receives no vacation pay. Company D has a cost accounting period which ends on December 31; however Company D customarily accrues its anticipated liability for vacation pay at July 1 in 12 equal installments over the ''vacation year'' starting on July 1 of the previous year and ending on June 30 of the current year. Company D has no liability for vacation pay at January 1 or at December 31. In accordance with 9904.408–50(b)(3), the amount of vacation cost which Company D must assign to each cost accounting period is the amount of such costs paid in that period. Therefore, Company D may not use the ''vacation year'' ending June 30 to apportion these costs between cost accounting periods.

(e) Company E's cost accounting period ends on December 31. Its vacation plan provides that on January 1, each employee who has been employed for at least 1 year shall become entitled to 2 weeks of vacation. The Company does not recognize a liability for vacation pay at December 31 because an employee must be employed on January 1 to be eligible.

(1) Despite the requirement that the employee also be employed on January 1, the necessary service was completed in the preceding cost accounting period. If the other terms of the plan are such that in accordance with this Standard, Company E must recognize its vacation costs on the accrual basis, then in accordance with 9904.408–50(b)(2), Company E must estimate its vacation costs as if the liability arose on December 31 rather than on the following January 1.

(2) Assume that Company E must comply with this Standard beginning on January 1, 1976. Assume that the employees of Company E earned $90,000 in vacation pay in 1975, all of which will be taken in 1976. Assume, further, that because of reduced employment levels, the employees of Company E will earn only $80,000 in vacation pay in 1976, $5,000 of which will be paid in 1976 because of layoffs. The following example illustrates the computation of vacation pay costs for Company E in 1976:

1976 beginning liability:	
With Standard (9904.408–50(d)(1)) ..	$90,000
Without Standard	0
Amount to be held in suspense (9904.408–50(d)(1))	90,000
1976 ending liability	75,000
Plus: Paid in 1976	95,000
Subtotal	170,000
Less: 1976 beginning liability	90,000

1976 vacation cost, basic amount	80,000
Amount in suspense at beginning of 1976	90,000
Less: 1976 ending liability	75,000
Suspense to be written off in 1976; additional 1976 vacation cost (9904.408–50(d)(3))	15,000
1976 basic vacation cost	80,000
Plus: 1976 reduction of suspense	15,000
1976 total vacation cost	95,000

(3) Assume, further, that all of the vacation entitlement which remained at December 31, 1976 ($75,000), is taken in 1977. Also, Company E hires a substantial number of additional employees in 1977, so that the amount of vacation entitlement earned in 1977 is $85,000. The following example illustrates the computation of vacation pay costs for Company E in 1977:

1977 ending liability	$85,000
Plus: Paid in 1977	75,000
Subtotal	160,000
Less: 1977 beginning liability	75,000
1977 vacation cost, basic amount	85,000
Amount in suspense at beginning of 1977 (Note 1)	75,000
1977 ending liability (Note 1)	85,000
1977 basic vacation cost	85,000
Plus: reduction of suspense (Note 1)	0
1977 total vacation cost	85,000

NOTE 1—Because the 1977 ending liability exceeds the amount in suspense at the beginning of 1977, there is no reduction of suspense in 1977.

(4) Assume further, that Company E goes out of business in 1978. All employees are terminated and paid both for the $85,000 vacation liability at the end of 1977 and an additional $40,000 earned in 1978. The following example illustrates the computation of vacation pay costs for Company E in 1978:

1978 ending liability	0
Plus: Paid in 1978	$125,000
Subtotal	125,000
Less: 1978 beginning liability	85,000
1978 vacation cost, basic amount	40,000
Amount in suspense at beginning of 1978	75,000
Less: 1978 ending liability	0
Suspense to be written off in 1978; additional 1978 vacation cost (9904.408–50(d)(3)	75,000
1978 basic vacation cost	40,000
Plus: 1978 reduction in suspense	75,000
1978 total vacation cost	115,000

(f) All of the salary costs of Company F's salaried employees are charged to service, administrative, or overhead functions. No accounting entries are made to segregate costs of compensated personal absence of these employees from their other salary costs, although other records are maintained to control the total amount of such absences.

(1) This policy does not violate the requirement of 9904.408–40(b) if such salaries are charged to overhead or indirect cost pools for subsequent allocation to final cost objectives over annually determined allocation bases which are appropriate for those pools.

(2) If the same policy were followed in the case of engineers whose salaries were directly allocated to two or more final cost objectives, or to both intermediate and final cost objectives, so that costs of compensated personal absence were charged directly to the jobs on which the individuals were working when paid, then this would violate the requirement of 9904.408–40(b) that these costs be allocated among cost objectives on the basis of the costs of the entire cost accounting period. Only if all salaries were directly allocated to a single final cost objective, as might be the case with personnel assigned to an overseas base for the performance of a single contract, would this practice be in accord with that requirement.

(g) Company G determines a ''charging rate'' for each employee. The charging rate includes an allowance for compensated personal absence based on average experience. As the employee performs services, the related cost objectives are charged for the services at the charging rate, the employee is paid at his base rate, and the excess is credited to the accrued liability for each

benefit. As benefits are paid, the costs are charged against the accrued liabilities. The amount of each accrued liability is adjusted at the end of the cost accounting period, and any difference is adjusted through appropriate overhead accounts in accordance with company policy.

(1) This method is not a violation of 9904.408–40(b) if it results in allocating the estimated annual costs of compensated personal absence at a rate which reflects the anticipated costs of the entire cost accounting period.

(2) The computation itself must comply with the criteria of 9904.408–40(a). For example, if the terms of the Company's sick leave plan are such that in accordance with this Standard, the costs should be recognized in the cost accounting period when they are paid, then the computation should be intended to amortize the expected costs of sick leave over the activity of that cost accounting period, leaving no accrued liability for sick leave at the end of the cost accounting period.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

9904.408–61 Interpretation. [Reserved]

9904.408–62 Exemption.

This Standard shall not apply to contracts and grants with state, local, and Federally recognized Indian Tribal Governments.

9904.408–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.409 Cost accounting standard—depreciation of tangible capital assets.

9904.409–10 [Reserved]

9904.409–20 Purpose.

The purpose of this Standard is to provide criteria and guidance for assigning costs of tangible capital assets to cost accounting periods and for allocating such costs in cost objectives within such periods in an objective and consistent manner. The Standard is based on the concept that depreciation costs identified with cost accounting periods and benefiting cost objectives within periods should be a reasonable measure of the expiration of service potential of the tangible assets subject to depreciation. Adherence to this Standard should provide a systematic and rational flow of the costs of tangible capital assets to benefitted cost objectives over the expected service lives of the assets. This Standard does not cover nonwasting assets or natural resources which are subject to depletion.

9904.409–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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.

(2) *Service life* means the period of usefulness of a tangible 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.

(3) *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.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9904.409–40 Fundamental requirement.

(a) The depreciable cost of a tangible capital asset (or group of assets) shall be assigned to cost accounting periods in accordance with the following criteria:

(1) The depreciable cost of a tangible capital asset shall be its capitalized cost less its estimated residual value.

(2) The estimated service life of a tangible capital asset (or group of assets) shall be used to determine the cost accounting periods to which the depreciable cost will be assigned.

(3) The method of depreciation selected for assigning the depreciable cost of a tangible capital asset (or group of assets) to the cost accounting periods representing its estimated service life shall reflect the pattern of consumption of services over the life of the asset.

(4) The gain or loss which is recognized upon disposition of a tangible capital asset shall be assigned to the cost accounting period in which the disposition occurs.

(b) The annual depreciation cost of a tangible capital asset (or group of assets) shall be allocated to cost objectives for which it provides service in accordance with the following criteria:

(1) Depreciation cost may be charged directly to cost objectives only if such charges are made on the basis of usage and only if depreciation costs of all like assets used for similar purposes are charged in the same manner.

(2) Where tangible capital assets are part of, or function as, an organizational unit whose costs are charged to other cost objectives based on measurement of the services provided by the organizational unit, the depreciation cost of such assets shall be included as part of the cost of the organizational unit.

(3) Depreciation costs which are not allocated in accordance with paragraph (b) (1) or (2) of this subsection, shall be included in appropriate indirect cost pools.

(4) The gain or loss which is recognized upon disposition of a tangible capital asset, where material in amount, shall be allocated in the same manner as the depreciation cost of the asset has been or would have been allocated for the cost accounting period in which the disposition occurs. Where such gain or loss is not material, the amount may be included in an appropriate indirect cost pool.

9904.409–50 Techniques for application.

(a) Determination of the appropriate depreciation charges involves estimates both of service life and of the likely pattern of consumption of services in the cost accounting periods included in such life. In selecting service life estimates and in selecting depreciation methods, many of the same physical and economic factors should be considered. The following are among the factors which may be taken into account: Quantity and quality of expected output, and the timing thereof; costs of repair and maintenance, and the timing thereof; standby or incidental use and the timing thereof; and technical or economic obsolescence of the asset (or group of assets), or of the product or service it is involved in producing.

(b) Depreciation of a tangible capital asset shall begin when the asset and any others on which its effective use depends are ready for use in a normal or acceptable fashion. However, where partial utilization of a tangible capital asset is identified with a specific operation, depreciation shall commence on any portion of the asset which is substantially completed and used for that operation. Depreciable spare parts which are required for the operation of such tangible capital assets shall be accounted for over the service life of the assets.

(c) A consistent policy shall be followed in determining the depreciable

cost to be assigned to the beginning and ending cost accounting periods of asset use. The policy may provide for any reasonable starting and ending dates in computing the first and last year depreciable cost.

(d) Tangible capital assets may be accounted for by treating each individual asset as an accounting unit, or by combining two or more assets as a single accounting unit, provided such treatment is consistently applied over the service life of the asset or group of assets.

(e) Estimated service lives initially established for tangible capital assets (or groups of assets) shall be reasonable approximations of their expected actual periods of usefulness, considering the factors mentioned in paragraph (a) of this subsection. The estimate of the expected actual periods of usefulness need not include the additional period tangible capital assets are retained for standby or incidental use where adequate records are maintained which reflect the withdrawal from active use.

(1) The expected actual periods of usefulness shall be those periods which are supported by records of either past retirement or, where available, withdrawal from active use (and retention for standby or incidental use) for like assets (or groups of assets) used in similar circumstances appropriately modified for specifically identified factors expected to influence future lives. The factors which can be used to modify past experience include:

(i) Changes in expected physical usefulness from that which has been experienced such as changes in the quantity and quality of expected output.

(ii) Changes in expected economic usefulness, such as changes in expected technical or economic obsolescence of the asset (or group of assets), or of the product or service produced.

(2) Supporting records shall be maintained which are adequate to show the age at retirement or, if the contractor so chooses, at withdrawal from active use (and retention for standby or incidental use) for a sample of assets for each significant category. Whether assets are accounted for individually or by groups, the basis for estimating service life shall be predicated on supporting records of experienced lives for either individual assets or any reasonable grouping of assets as long as that basis is consisently used. The burden shall be on the contractor to justify estimated service lives which are shorter than such experienced lives.

(3) The records required in subparagraphs (e) (1) and (2) of this subsection, if not available on the date when the requirements of this Standard must first be followed by a contractor, shall be developed from current and historical fixed asset records and be available following the second fiscal year after that date. They shall be used as a basis for estimates of service lives of tangible capital assets acquired thereafter. Estimated service lives used for financial accounting purposes (or other accounting purposes where depreciation is not recorded for financial accounting purposes for some non-commercial organizations), if not unreasonable under the criteria specified in paragraph (e) of this subsection, shall be used until adequate supporting records are available.

(4) Estimated service lives for tangible capital assets for which the contractor has no available data or no prior experience for similar assets shall be established based on a projection of the expected actual period of usefulness, but shall not be less than asset guideline periods (mid-range) established for asset guideline classes under Internal Revenue Procedures which are in effect as of the first day of the cost accounting period in which the assets are acquired. Use of this alternative procedure shall cease as soon as the contractor is able to develop estimates which are appropriately supported by his own experience.

(5) The contracting parties may agree on the estimated service life of individual tangible capital assets where the unique purpose for which the equipment was acquired or other special circumstances warrant a shorter estimated service life than the life determined in accordance with the other provisions of this 9904.409–50(e) and where the shorter life can be reasonably predicted.

(f)(1) The method of depreciation used for financial accounting purposes (or other accounting purposes where

depreciation is not recorded for financial accounting purposes) shall be used for contract costing unless:

(i) Such method does not reasonably reflect the expected consumption of services for the tangible capital asset (or group of assets) to which applied, or

(ii) The method is unacceptable for Federal income tax purposes.

If the contractors' method of depreciation used for financial accounting purposes (or other accounting purposes as provided above) does not reasonably reflect the expected consumption of services or is unacceptable for Federal income tax purposes, he shall establish a method of depreciation for contract costing which meets these criteria, in accordance with subparagraph (f)(3) of this subsection.

(2) After the date of initial applicability of this Standard, selection of methods of depreciation for newly acquired tangible capital assets, which are different from the methods currently being used for like assets in similar circumstances, shall be supported by projections of the expected consumption of services of those assets (or groups of assets) to which the different methods of depreciation shall apply. Support in accordance with paragraph (f)(3) of this subsection shall be based on the expected consumption of services of either individual assets or any reasonable grouping of assets as long as the basis selected for grouping assets is consistently used.

(3) The expected consumption of asset services over the estimated service life of a tangible capital asset (or group of assets) is influenced by the factors mentioned in paragraph (a) of this subsection which affect either potential activity or potential output of the asset (or group of assets). These factors may be measured by the expected activity or the expected physical output of the assets, as for example: Hours of operation, number of operations performed, number of units produced, or number of miles traveled. An acceptable surrogate for expected activity or output might be a monetary measure of that activity or output generated by use of tangible capital assets, such as estimated labor dollars, total cost incurred or total revenues, to the extent that such monetary measures can reasonably be related to the usage of specific tangible capital assets (or groups of assets). In the absence of reliable data for the measurement or estimation of the consumption of asset services by the techniques mentioned, the expected consumption of services may be represented by the passage of time. The appropriate method of depreciation should be selected as follows:

(i) An accelerated method of depreciation is appropriate where the expected consumption of asset services is significantly greater in early years of asset life.

(ii) The straight-line method of depreciation is appropriate where the expected consumption of asset services is reasonably level over the service life of the asset (or group of assets).

(g) The estimated service life and method of depreciation to be used for an original complement of low-cost equipment shall be based on the expected consumption of services over the expected useful life of the complement as a whole and shall not be based on the individual items which form the complement.

(h) Estimated residual values shall be determined for all tangible capital assets (or groups of assets). For tangible personal property, only estimated residual values which exceed ten percent of the capitalized cost of the asset (or group of assets) need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used consistent with the provisions of this Standard, the residual value need not be deducted from capitalized cost to determine depreciable costs. No depreciation cost shall be charged which would significantly reduce book value of a tangible capital asset (or group of assets) below its residual value.

(i) Estimates of service life, consumption of services, and residual value shall be reexamined for tangible capital assets (or groups of assets) whenever circumstances change significantly. Where changes are made to the estimated service life, residual value, or method of depreciation during the life of a tangible capital asset, the remaining depreciable costs for cost

accounting purposes shall be limited to the undepreciated cost of the assets and shall be assigned only to the cost accounting period in which the change is made and to subsequent periods.

(j)(1) Gains and losses on disposition of tangible capital assets shall be considered as adjustments of depreciation costs previously recognized and shall be assigned to the cost accounting period in which disposition occurs except as provided in subparagraphs (j) (2) and (3) of this subsection. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds in the event of involuntary conversion, and its undepreciated balance. However, the gain to be recognized for contract costing purposes shall be limited to the difference between the original acquisition cost of the asset and its undepreciated balance.

(2) Gains and losses on the disposition of tangible capital assets shall not be recognized where:

(i) Assets are grouped and such gains and losses are processed through the accumulated depreciation account, or

(ii) The asset is given in exchange as part of the purchase price of a similar asset and the gain or loss is included in computing the depreciable cost of the new asset.

Where the disposition results from an involuntary conversion and the asset is replaced by a similar asset, gains and losses may either be recognized in the period of disposition or used to adjust the depreciable cost base of the new asset.

(3) The contracting parties may account for gains and losses arising from mass or extraordinary dispositions in a manner which will result in treatment equitable to all parties.

(4) Gains and losses on disposition of tangible capital assets transferred in other than an arms-length transaction and subsequently disposed of within 12 months from the date of transfer shall be assigned to the transferor.

(5) The provisions of this subsection 9904.409–50(j) do not apply to business combinations. The carrying values of tangible capital assets acquired subsequent to a business combination shall be established in accordance with the provisions of subsection 9904.404–50(d).

(k) Where, in accordance with 9904.409–40(b)(1), the depreciation costs of like tangible capital assets used for similar purposes are directly charged to cost objectives on the basis of usage, average charging rates based on cost shall be established for the use of such assets. Any variances between total depreciation cost charged to cost objectives and total depreciation cost for the cost accounting period shall be accounted for in accordance with the contractor's established practice for handling such variances.

(l) Practices for determining depreciation methods, estimated service lives and estimated residual values need not be changed for assets acquired prior to compliance with this Standard if otherwise acceptable under applicable procurement regulations. However, if changes are effected such changes must conform to the criteria established in this Standard and may be effected on a prospective basis to cover the undepreciated balance of cost by agreement between the contracting parties pursuant to negotiation under subdivision (a)(4) (ii) or (iii) of the contract clause set out at 9903.201–4(a).

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992; 61 FR 5523, Feb. 13, 1996]

9904.409–60 Illustrations.

The following examples are illustrative of the provisions of this Standard.

(a) Companies X, Y, and Z purchase identical milling machines to be used for similar purposes.

(1) Company X estimates service life for tangible capital assets on an individual asset basis. Its experience with similar machines is that the average replacement period is 14 years. Under the provisions of the Standard, Company X shall use the estimated service life of 14 years for the milling machine unless it can demonstrate changed circumstances or new circumstances to support a different estimate.

(2) Company Y estimates service life for tangible capital assets by grouping assets of the same general kind and with similar service lives. Accordingly, all machine tools are accounted for as a single group. The average replacement life for machine tools for Company Y is 12 years. In accordance with

the provisions of the Standard, Company Y shall use a life of 12 years for the acquisition unless it can support a different estimate for the entire group.

(3) Company Z estimates service life for tangible capital assets by grouping assets according to use without regard to service lives. Accordingly, all machinery and equipment is accounted for as a single group. The average replacement life for machinery and equipment in Company Z is 10 years. In accordance with the provisions of the Standard, Company Z shall use an estimated service life of ten years for the acquisition unless it can support a different estimate for the entire group.

(b) Company X desires to charge depreciation of the milling machine described in paragraph (a) of this subsection, directly to final cost objectives. Usage of the milling machine can be measured readily based on hours of operation. Company X may charge depreciation cost directly on a unit of time basis provided he uses one depreciation charging rate for all like milling machines in the machine shop and charges depreciation for all such milling machines directly to benefiting cost objectives.

(c) A contractor acquires, and capitalizes as an asset accountability unit, a new lathe. The estimated service life is 10 years for the lathe. He acquires, and capitalizes as an original complement of low-cost equipment related to the lathe, a collection of tool holders, chucks, indexing heads, wrenches, and the like. Although individual items comprising the complement have an average life of 6 years, replacements of these items will be made as needed and, therefore, the expected useful life of the complement is equal to the life of the lathe. An estimated service life of 10 years should be used for the original complement.

(d) A contractor acquires a test facility with an estimated physical life of 10 years, to be used on contracts for a new program. The test facility was acquired for $5 million. It is expected that the program will be completed in 6 years and the test facility acquired is not expected to be required for other products of the contractor. Although the facility will last 10 years, the contracting parties may agree in advance to depreciate the facility over 6 years.

(e) Contractor acquires a building by donation from its local Government. The building had been purchased new by another company and subsequently acquired by the local Government. Contractor capitalizes the building at its fair value. Under the Standard the depreciable cost of the asset based on that value may be accounted for over its estimated service life and allocated to cost objectives in accordance with contractor's cost allocation practices.

(f) A major item of equipment which was acquired prior to the applicability of this Standard was estimated, at acquisition, to have a service life of 12 years and a residual value of no more than 10 percent of acquisition cost. After 4 years of service, during which time this Standard has become applicable, a change in the production situation results in a well-supported determination to shorten the estimated service life to a total of 7 years. The revised estimated residual value is 15 percent of acquisition cost. The annual depreciation charges based on this particular asset will be appropriately increased to amortize the remaining cost, less the current estimate of residual value, over the remaining 3 years of expected usefulness. This change is not a change of cost accounting practice, but a correction of numeric estimates. The requirement of 9904.409–50(1) for an adjustment pursuant to subdivision (a)(4) (ii) or (iii) of the CAS clause does not apply.

(g) The support required by 9904.409–50(e) can, in all likelihood, be derived by sampling from almost any reasonable fixed asset records. Of course, the more complete the data in the records which are available, the more confidence there can be in determinations of asset service lives. The following descriptions of sampling methods are illustrations of techniques which may be useful even with limited fixed asset records.

(1) A company maintains an inventory of assets in use. The company should select a sampling time period which, preferably, is significantly longer than the anticipated life of the assets for which lives are to be established. Of course, the inventory must

be available for each year in the sampling time period. The company would then select a randon sample of items in each year except the most recent year of the time period. Each item in the sample would be compared to the subsequent year's inventory to determine if the asset is still in service; if not, then the asset had been retired in the year from which the sample was drawn. The item is then traced to prior year inventories to determine the year in which acquired.

NOTE: Sufficient items must be drawn in each year to ensure an adequate sample.

(2) A company maintains an inventory of assets in use and also has a record of retirements. In this case the company does not have to compare the sample to subsequent years to determine if disposition has occurred. As in Example (g)(1) of this subsection, the sample items are traced to prior years to determine the year in which acquired.

(3) A company maintains retirement records which show acquisition dates. The company should select a sampling time period which, preferably, is significantly longer than the anticipated life of the assets for which lives are to be estimated. The company would then select a random sample of items retired in each year of the sampling time period and tabulate age at requirement.

(4) A company maintains only a record of acquisitions for each year. The company should select a random sample of items acquired in the most recent complete year and determine from current records or observations whether each item is currently in service. The acquisitions of each prior year should be samples in turn to determine if sample items are currently in service. This sampling should be performed for a time period significantly longer than the anticipated life of assets for which the lives are to be established, but can be discontinued at the point at which sample items no longer appear in current use. From the data obtained, mortality tables can be constructed to determine average asset life.

(5) A company does not maintain accounting records on fully depreciated assets. However, property records are maintained, and such records are retained for 3 years after disposition of an asset in groups by year of disposition. An analysis of these retirements may be made by selecting the larger dollar items for each category of assets for which lives are to be determined (for example, at least 75 percent of the acquisition values retired each year). The cases cited above are only examples and many other examples could have been used. Also, in any example, a company's individual circumstances must be considered in order to take into account possible biased results because of changes in organizations, products, acquisition policies, economic factors, etc. The results from example (g)(5) of this subsection, for instance, might be substantially distorted if the 3-year period was unusual with respect to dispositions. Therefore, the examples are illustrative only and any sampling performed in compliance with this Standard should take into account all relevant information to ensure that reasonable results are obtained.

9904.409–61 Interpretation. [Reserved]

9904.409–62 Exemption.

This Standard shall not apply where compensation for the use of tangible capital assets is based on use rates or allowances provided by other appropriate Federal acquisition regulations such as those governing:

(a) Educational institutions,

(b) State, local, and Federally recognized Indian tribal government, or

(c) Construction equipment rates (See 48 CFR 31.105(d)).

9904.409–63 Effective date.

(a) This Standard is effective April 15, 1996.

(b) This Standard shall be applied beginning with the contractor's next full cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.409 in effect prior to April 15, 1996, until this Standard, effective April 15, 1996, becomes applicable after the receipt of a

contract or subcontract to which this revised Standard applies.

[61 FR 5523, Feb. 13, 1996]

9904.410 Allocation of business unit general and administrative expenses to final cost objectives.

9904.410–10 [Reserved]

9904.410–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the allocation of business unit general and administrative (G&A) expenses to business unit final cost objectives based on their beneficial or causal relationship. These expenses represent the cost of the management and administration of the business unit as a whole. The Standard also provides criteria for the allocation of home office expenses received by a segment to the cost objectives of that segment. This Standard will increase the likelihood of achieving objectivity in the allocation of expenses to final cost objectives and comparability of cost data among contractors in similar circumstances.

9904.410–30 Definitions.

(a) The following are definitions of terms which are prominent in this standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this section, requires otherwise.

(1) *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.

(2) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(3) *Cost input* means the cost, except G&A expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

(4) *Cost objective* means 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.

(5) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and, in the contractor's accumulation systems, is one of the final accumulation points.

(6) *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.

(7) *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 terms include Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority of ownership, but over which it exercises control.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.410–40 Fundamental requirement.

(a) Business unit G&A expenses shall be grouped in a separate indirect cost pool which shall be allocated only to final cost objectives.

(b)(1) The G&A expense pool of a business unit for a cost accounting period shall be allocated to final cost objectives of that cost accounting period by means of a cost input base representing the total activity of the business unit except as provided in subparagraph (b)(2) of this subsection. The cost input base selected shall be the

one which best represents the total activity of a typical cost accounting period.

(2) The allocation of the G&A expense pool to any particular final cost objectives which receive benefits significantly different from the benefits accruing to other final cost objectives shall be determined by special allocation (9904.410–50(j)).

(c) Home office expenses received by a segment shall be allocated to segment cost objectives as required by 9904.410–50(g).

(d) Any costs which do not satisfy the definition of G&A expense but which have been classified by a business unit as G&A expenses, can remain in the G&A expense pool unless they can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base.

9904.410–50 Techniques for application.

(a) G&A expenses of a segment incurred by another segment shall be removed from the incurring segment's G&A expense pool. They shall be allocated to the segment for which the expenses were incurred on the basis of the beneficial or causal relationship between the expenses incurred and all benefiting or causing segments. If the expenses are incurred for two or more segments, they shall be allocated using an allocation base common to all such segments.

(b) The G&A expense pool may be combined with other expenses for allocation to final cost objectives provided that—

(1) The allocation base used for the combined pool is appropriate both for the allocation of the G&A expense pool under this Standard and for the allocation of the other expenses; and

(2) Provision is made to identify the components and total of the G&A expense pool separately from the other expenses in the combined pool.

(c) Expenses which are not G&A expenses and are insignificant in amount may be included in the G&A expense pool for allocation to final cost objectives.

(d) The cost input base used to allocate the G&A expense pool shall include all significant elements of that cost input which represent the total activity of the business unit. The cost input base selected to represent the total activity of a business unit during a cost accounting period may be: Total cost input; value-added cost input; or single element cost input. The determination of which cost input base best represents the total activity of a business unit must be judged on the basis of the circumstances of each business unit.

(1) A total cost input base is generally acceptable as an appropriate measure of the total activity of a business unit.

(2) Value-added cost input shall be used as an allocation base where inclusion of material and subcontract costs would significantly distort the allocation of the G&A expense pool in relation to the benefits received, and where costs other than direct labor are significant measures of total activity. A value-added cost input base is total cost input less material and subcontract costs.

(3) A single element cost input base; e.g., direct labor hours or direct labor dollars, which represents the total activity of a business unit may be used to allocate the G&A expense pool where it produces equitable results. A single element base may not produce equitable results where other measures of activity are also significant in relation to total activity. A single element base is inappropriate where it is an insignificant part of the total cost of some of the final cost objectives.

(e) Where, prior to the effective date of this Standard, a business unit's disclosed or established cost accounting practice was to use a cost of sales or sales base, that business unit may use the transition method set out in appendix A hereof.

(f) Cost input shall include those expenses which by operation of this Standard are excluded from the G&A expense pool and are not part of a combined pool of G&A expenses and other expenses allocated using the same allocation base.

(g)(1) Allocations of the home office expenses of:

(i) Line management of particular segments or groups of segments,

(ii) Residual expenses, and

(iii) Directly allocated expenses related to the management and administration of the receiving segment as a whole, shall be included in the receiving segment's G&A expense pool.

(2) Any separate allocation of the expenses of home office centralized service functions, staff management of specific activities of segments, and central payments or accruals, which is received by a segment, shall be allocated to the segment cost objectives in proportion to the beneficial or causal relationship between the cost objectives and the expense if such allocation is significant in amount. Where a beneficial or causal relationship for the expense is not identifiable with segment cost objectives, the expense may be included in the G&A expense pool.

(h) Where a segment performs home office functions and also performs as an operating segment having a responsibility for final cost objectives, the expense of the home office functions shall be segregated. These expenses shall be allocated to all benefiting or causing segments, including the segment performing the home office functions, pursuant to disclosed or established accounting practices for the allocation of home office expenses to segments.

(i) For purposes of allocating the G&A expense pool, items produced or worked on for stock or product inventory shall be accounted for as final cost objectives in accordance with the following paragraphs:

(1) Where items are produced or worked on for stock or product inventory in a given cost accounting period, the cost input to such items in that period shall be included only once in the computation of the G&A expense allocation base and in the computation of the G&A expense allocation rate for that period and shall not be included in the computation of the base or rate for any other cost accounting period.

(2) A portion of the G&A expense pool shall be allocated to items produced or worked on for stock or product inventory in the cost accounting period or periods in which such items are produced at the rates determined for such periods except as provided in subparagraph (i)(3) of this subsection.

(3) Where the contractor does not include G&A expense in inventory as part of the cost of stock or product inventory items, the G&A rate of the cost accounting period in which such items are issued to final cost objectives may be used to determine the G&A expenses applicable to issues of stock or product inventory items.

(j) Where a particular final cost objective in relation to other final cost objectives receives significantly more or less benefit from G&A expense than would be reflected by the allocation of such expenses using a base determined pursuant to paragraph (d) of this subsection, the business unit shall account for this particular final cost objective by a special allocation from the G&A expense pool to the particular final cost objective commensurate with the benefits received. The amount of a special allocation to any such final cost objective shall be excluded from the G&A expense pool required by9904.410–40(a), and the particular final cost objective's cost input data shall be excluded from the base used to allocate this pool.

9904.410–60 Illustrations.

(a) Business Unit A has been including the cost of scientific computer operations in its G&A expense pool. The scientific computer is used predominantly for research and development, rather than for the management and administration of the business unit as a whole. The costs of the scientific computer operation do not satisfy the Standard's definition of G&A expense; however, they may remain in the G&A expense pool unless they can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

(b) Segment B performs a budgeting function, the cost of which is included in its G&A expense pool. This function includes the preparation of budgets for another segment. The cost of preparing the budgets for the other segment should be removed from B's G&A expense pool and transferred to the other segment.

(c)(1) Business Unit C has a personnel function which is divided into two parts: A vice president of personnel who establishes personnel policy and overall guidance, and a personnel department which handles hirings, testing, evaluations, etc. The expense of the vice president is included in the G&A expense pool. The expense of the personnel department is allocated to the other indirect cost pools based on the beneficial or causal relationship between that expense and the indirect cost pools. This procedure is in compliance with the requirements of this Standard.

(2) Business Unit C has included selling costs as part of its G&A expense pool. Unit C wishes to continue to include selling costs in its G&A pool. Under the provisions of this Standard, Unit C may continue to include selling costs in its G&A pool, and these costs will be allocated over a cost input base selected in accordance with the provisions of 9904.410–50(d).

(3) Business Unit C has included IR&D and B&P costs in its G&A expense pool. Unit C has used a cost of sales base to allocate its G&A expense pool. As of January 1, 1978 (assumed for purposes of this illustration), the date on which Unit C must first allocate its G&A expense pool in accordance with the requirements of this Standard, Unit C has among its final cost objectives several cost reimbursement contracts and fixed price contracts subject to the CAS clause (referred to as the preexisting contracts). If Unit C chooses to use the transition method in 9904.410–50(e):

(i) Unit C shall allocate IR&D and B&P costs during the transition period (from January 1, 1978, to and including the cost accounting period during which the preexisting contracts are completed), to the preexisting contracts as part of its G&A expense pool using a cost of sales base pursuant to 9904.410–50(e) and appendix A to 9904.410.

(ii) During the transition period such costs, as part of the G&A expense pool, shall be allocated to new cost reimbursement contracts and new fixed price contracts subject to the CAS clause using a cost input base as required by 9904.410–50 (d) and (e) and appendix A to 9904.410.

(iii) Beginning with the cost accounting period after the transition period the IR&D and B&P costs, as part of the G&A expense pool, shall be allocated to all final cost objectives using a cost input base as required by 9904.410–50(d). If Unit C chooses not to use the transition method in 9904.410–50(e), the contractual provision requiring appropriate equitable adjustment of the prices of affected prime contracts and subcontracts will be implemented.

(4) Business Unit C has accounted for and allocated IR&D and B&P costs in a cost pool separate and apart from the G&A expense pool. Unit C may continue to account for these costs in a separate cost pool under the provision of this Standard. If Unit C is to use a total cost input base, these costs when accounted for and allocated in a cost pool separate and apart from the G&A expense pool will become part of the total cost input base used by Unit C to allocate the G&A expense pool.

(5) Business Unit C has included selling costs as part of its G&A expense pool. Unit C has used a cost of sales base to allocate the G&A expense pool. Unit C desires to continue to allocate selling costs using the costs of sales base. Under the provisions of this Standard, Unit C would account for selling costs as a cost pool separate and apart from the G&A expense pool, and continue to allocate these costs over a cost of sales base. If Unit C uses a total cost input base to allocate the G&A expense pool, the selling costs will become part of the total cost input base.

(d)(1) Business Unit D has accounted for selling costs in a cost pool separate and apart from its G&A expense pool and has allocated these costs using a cost of sales base. Under the provisions of this Standard, Unit D may continue to account for those costs in a separate pool and allocate them using a cost of sales base. Unit D has a total cost input base to allocate its G&A expense pool. The selling costs will become part of the cost input base used by Unit D to allocate the G&A expense pool.

(2) During a cost accounting period, Business Unit D buys $2,000,000 of raw

materials. At the end of that cost accounting period, $500,000 of raw materials inventory have not been charged out to contracts or other cost objectives. The $500,000 of raw materials are not part of the total cost input base for the cost accounting period, because they have not been charged to the production of goods and services during that period. If all of the $2,000,000 worth of raw material had been charged to cost objectives during the cost accounting period, the cost input base for the allocation of the G&A expense pool would include the entire $2,000,000.

(3) Business Unit D manufactures a variety of testing devices. During a cost accounting period, Unit D acquires and uses a small building, constructs a small production facility using its own resources, and keeps for its own use one unit of a testing device that it manufactures and sells to its customers. The acquisition cost of the building is not part of the total cost input base; however, the depreciation taken on the building would be part of the total cost input base. The costs of construction of the small production facility are not part of the total cost input base. The requirements of 9904.404 provide that those G&A expenses which are identifiable with the constructed asset and are material in amount shall be capitalized as part of the cost of the production facility. If there are G&A expenses material in amount and identified with the constructed asset, these G&A expenses would be removed from the G&A expense pool prior to the allocation of this pool to final cost objectives. The cost of the testing device shall be part of the total cost input base per the requirements of 9904.404 which provides that the costs of constructed assets identical with the contractor's regular product shall include a full share of indirect cost.

(e)(1) Business Unit E produces Item Z for stock or product inventory. The business unit does not include G&A expense as part of the inventory cost of these items for costing or financial reporting purposes. A production run of these items occurred during Cost Accounting Period 1. A number of the units produced were not issued during Period 1 and are issued in Period 2. However, those units produced in Period 1 shall be included in the cost input of that period for calculating the G&A expense allocation base and shall not be included in the cost input of Period 2.

(2) Business Unit E should apply the G&A expense rate of Period 1 to those units of Item Z issued during Period 1 and may apply the rate of Period 2 to the units issued in Period 2.

(3) If the practice of Business Unit E is to include G&A expense as part of the cost of stock or product inventory, the inventory cost of all units of Item Z produced in Period 1 and remaining in inventory at the end of Period 1, should include G&A expense using the G&A rate of Period 1.

(f)(1) Business Unit F produced Item X for stock or product inventory. The business unit does not include G&A expense as part of the inventory cost of these items. A production run of these items was started, finished, and placed into inventory in a single cost accounting period. These items are issued during the next cost accounting period.

(2) The cost of items produced for stock or product inventory should be included in the G&A base in the same year they are produced. The cost of such items is not to be included in the G&A base on the basis of when they are issued to final cost objectives. Therefore, the time of issuance of these items from inventory to a final cost objective is irrelevant in computing the G&A base.

(g) The normal productive activity of Business Unit G includes the construction of base operating facilities for others. Unit G uses a total cost input base to allocate G&A expense to final cost objectives. As part of a contract to construct an operating facility, Unit G agrees to acquire a large group of trucks and other mobile equipment to equip the base operating facility. Unit G does not usually supply such equipment. The cost of the equipment constitutes a significant part of the contract cost. A special G&A allocation to this contract shall be agreed to by the parties if they agree that in the circumstances the contract as a whole receives substantially less benefit from the G&A expense pool than that which

would be represented by a cost allocation based on inclusion of the contract cost in the total cost input base.

(h)(1) The home office of Segment H separately allocates to benefiting or causing segments significant home office expenses of staff management functions relative to manufacturing, staff management functions relative to engineering, central payment of health insurance costs, and residual expenses. Segment H receives these expenses as separate allocations and maintains three indirect cost pools; i.e., G&A expense, manufacturing overhead, and engineering overhead; all home office expenses allocated to Segment H are included in Segment H's G&A expense pool.

(2) This accounting practice of Segment H does not comply with 9904.410–50(g)(2). Home office residual expenses should be in the G&A expense pool, and the expenses of the staff management functions relative to manufacturing and engineering should be included in the manufacturing overhead and engineering overhead pools, respectively. The health insurance costs should be allocated in proportion to the beneficial and causal relationship between these costs and Segment H's cost objectives.

9904.410–61 Interpretation. [Reserved]

9904.410–62 Exemption.

This Standard shall not apply to contracts and grants with state, local, and Federally recognized Indian tribal governments.

9904.410–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

APPENDIX A TO 9904.410—TRANSITION FROM A COST OF SALES OR SALES BASE TO A COST INPUT BASE

A business unit may use the method described below for transition from the use of a cost of sales or sales base to a cost input base.

(1) Calculate the cost of sales or sales base in accordance with the cost accounting practice disclosed or established prior to the date established by 9904.410–80(b) of the original Cost Accounting Standard.

(2) Calculate the G&A expense allocation rate using the base determined in subparagraph (1) of this appendix and use that rate to allocate from the G&A expense pool to the final cost objectives which were in existence prior to the date on which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(3) Calculate a cost input base in compliance with 9904.410–50(d).

(4) Calculate the G&A expense rate using the base determined in subparagraph (3) of this appendix and use that rate to allocate from the G&A expense pool to those final cost objectives which arise under contracts entered into on or after the date on which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(5) The calculations set forth in subparagraphs (1)–(4) of this appendix shall be performed for each cost accounting period during which final cost objectives described in (2) are being performed.

(6) The business unit shall establish an inventory suspense account. The amount of the inventory suspense account shall be equal to the beginning inventory of contracts subject to the CAS clause of the cost accounting period in which the business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(7) In any cost accounting period, after the cost accounting periods described in subparagraph (5) of this Appendix, if the ending inventory of contracts subject to the CAS clause is less than the balance of the inventory suspense account, the business unit shall calculate two G&A expense allocation rates, one to allocate G&A expenses to contracts subject to the CAS clause and one applicable to other work.

(a) The G&A expense pool shall be divided in the proportion which the cost input of the G&A expense allocation base of the contracts subject to the CAS clause bears to the total of the cost input allocation base, selected in accordance with 9904.410–50(d), for the cost accounting period.

(b) The G&A expenses applicable to contracts subject to the CAS clause shall be reduced by an amount determined by multiplying the difference between the balance of the inventory suspense account and the ending inventory of contracts subject to the CAS clause by the cost of sales rate, as determined under subparagraph (1) of this Appendix, of the cost accounting period in which a business unit must first allocate costs in accordance with the requirements of this Cost Accounting Standard.

(8) In any cost accounting period in which such a reduction is made, the balance of the inventory suspense account shall be reduced to be equal to the ending inventory of contracts subject to the CAS clause of that cost accounting period.

The following illustrates how a business unit would use this transition method.

1. Business Unit R has been using a cost of sales base to allocate its G&A expense pool to final cost objectives. Unit R uses a calendar year as its cost accounting period. On October 1, 1976 (assumed for purposes of this illustration) Cost Accounting Standard 410 becomes effective. On October 2, 1976, Unit R receives a 3-year contract containing the Cost Accounting Standards clause. As a result, Unit R must comply with the requirements of the Standard in the cost accounting period beginning in January 1978. As of January 3, 1978, Business Unit R has the following contracts:

(1) Contract I—A 4-year contract awarded in January 1975.

(2) Contract II—A 3-year contract which was negotiated in March 1976, and was awarded on October 2, 1976.

(3) Contract III—A 4-year contract awarded on January 2, 1978.

If Business Unit R chooses to use the transition method provided in 9904.410–50(e), it will allocate the G&A expense pool to these contracts as follows:

(a) Contract I—Since Contract I was in existence prior to January 1, 1978, the G&A expense pool shall be allocated to it using a cost of sales base as provided in 9904.410–50(e).

(b) Contract II—Since this contract was in existence prior to January 1, 1978, the G&A expense pool shall be allocated to it using a cost of sales base as provided in 9904.410–50(e).

(c) Contract III—Since this contract was awarded after January 1, 1978, the G&A expense pool shall be allocated to this contract using a cost input base.

Having chosen to use 9904.410–50(e), Business Unit R will use the transition method of allocating the G&A expense pool to final cost objectives until all contracts awarded prior to January 1, 1978, are completed (1979 if the contracts are completed on schedule). Beginning with the cost accounting period subsequent to that time, 1980, Unit R will use a cost input base to allocate the G&A expense pool to all cost objectives. Unit R will also carry forward an inventory suspense account in accordance with the requirements of this Standard.

2.A. Business Unit N is first required to allocate its costs in accordance with the requirements of 9904.410 during the fiscal year beginning January 1, 1978. Unit N has used a cost of sales base to allocate its G&A expense pool.

During the years 1978, 1979, 1980, Business Unit N reported the following data:

	Contracts prior to Jan. 1, 1978				Contracts prior to Jan. 1, 1978		
	Total	Non-CAS work	CAS-fixed price work	CAS-cost contract	Non-CAS work	CAS-fixed price work	CAS-cost contracts
Year 1978:							
Beginning inventory	$500	300	200	0	0	0	0
Cost input	+3000	400	600	700	500	500	300
Total	3500	700	800	700	500	500	300
Cost of sales	−3000	600	550	700	450	400	300
Ending inventory	500	100	250	0	50	100	0
Year 1979:							
Beginning inventory	500	100	250	0	50	100	0
Cost input	+3000	400	600	700	500	500	300
Total	3500	500	850	700	550	600	300
Cost of sales	−2500	450	650	700	150	250	300
Ending inventory	1000	50	200	0	400	350	0
Year 1980:							
Beginning inventory	1000	50	200	0	400	350	0
Cost input	+3000	400	600	700	500	500	300
Total	4000	450	800	700	900	850	300
Cost of sales	−3250	450	800	700	450	550	300
Ending inventory	750	0	0	0	450	300	0

Notes:

Operating data is in thousands of dollars.
G. & A. expense $375,000 in accordance with the requirements of this standard.

Work existing prior to January 1, 1978, may include—

(1) Government contracts which contain the CAS clause;

(2) Government contracts which do not contain the CAS clause;

(3) Contracts other than Government contracts or customer orders; and

(4) Production not specifically identified with contracts or customer orders under production or work orders existing prior to the date on which a business unit must first allocate its costs in compliance with this Standard and which are limited in time or quantity.

Production under standing or unlimited work orders, continuous flow processes and the like, not identified with contracts or customer orders are to be treated as final cost objectives awarded after the date on which a business unit must first allocate its costs in compliance with the requirements of this Standard.

Business Unit N may allocate the G&A expense pool as follows:

[In dollars]

	Year 1978	Year 1979	Year 1980
1. G.&A. expense pool	375	375	375
Cost of sales rate	375/3,000=.125	375/2,500=.150	375/3,250=.115
Cost input	375/3,000=.125	375/3,000=.125	375/3,000=.125
2. G.&A. allocations:			
Prior contracts:			
Non-CAS work	600×0.125=75.00	450×0.15=67.50	450×0.115=51.75
CAS-fixed price work	550×0.125=68.75	650×0.15=97.50	800×0.115=92.00
CAS-cost contracts	700×0.125=87.50	700×0.15=105.00	700×0.115=80.50
After contracts:			
Non-CAS work	500×0.125=62.50	500×0.125=62.50	500×0.125=62.50
CAS-fixed price work	500×0.125=62.50	500×0.125=62.50	500×0.125=62.50
CAS-cost contracts	300×0.125=37.50	300×0.125=37.50	300×0.125=37.55
	393.75	432.50	386.80
3. Inventory suspense account[1]	200		
G.&A. rate applicable	.125		

[1] Beginning inventory of contracts subject to the CAS clause, January 1978.

2.B. In cost accounting period 1982, Business Unit N has an ending inventory of contracts subject to the CAS clause of $100,000. This is the first cost accounting period after the transition in which the amount of the ending inventory is less than the amount of the inventory suspense account. During this cost accounting period, Business Unit N had G&A expenses of $410,000 and cost input of $3,500,000; $1,500,000 applicable to contracts subject to the CAS clause and $2,000,000 applicable to other work.

Business Unit N would compute its G&A expense allocation rate applicable to contracts subject to the CAS clause as follows:

(1) Amount of inventory suspense account	$200,000
Amount of ending inventory	100,000
Difference	100,000
G. & A. rate applicable (see 2.A. above)	×0.125
Adjustment to G. & A. expense applicable to contracts subject to the CAS clause	12,500
(2) G. & A. expense pool	410,000
G. & A. expenses applicable to contracts subject to the CAS clause ($1,500,000/$3,500,000 × $410,000)	175,890
G. & A. expenses applicable to other work	234,110
(3) G. & A. expenses applicable to contracts subject to the CAS clause	175,890
Adjustment to G. & A. expenses applicable to contracts subject to the CAS clause	−12,500
G. & A. expenses allocable to contracts subject to the CAS clause	163,390

(4) G. & A. expense allocation rate applicable to contracts subject to the CAS clause for cost accounting period 1982–$163,390/$1,500,000=0.109.

The amount of the inventory suspense account would be reduced to $100,000.

[57 FR 14153, Apr. 17, 1992; 57 FR 34081, 34167, Aug. 3, 1992]

9904.411 Cost accounting standard—accounting for acquisition costs of material.

9904.411–10 [Reserved]

9904.411–20 Purpose.

(a) The purpose of this Cost Accounting Standard is to provide criteria for the accounting for acquisition costs of material. The Standard includes provisions on the use of inventory costing methods. Consistent application of this Standard will improve the measurement and assignment of costs to cost objectives.

(b) This Cost Accounting Standard does not cover accounting for the acquisition costs of tangible capital assets nor accountability for Government-furnished materials.

[57 FR 14153, Apr. 17, 1992; 57 FR 34167, Aug. 3, 1992]

9904.411–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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.

(2) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(3) *Category of material* means a particular kind of goods, comprised of identical or interchangeable units, acquired or produced by a contractor, which are intended to be sold, or consumed or used in the performance of either direct or indirect functions.

(4) *Cost objective* means 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.

(5) *Material inventory record* means any record used for the accumulation of actual or standard costs of a category of material recorded as an asset for subsequent cost allocation to one or more cost objectives.

(6) *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.

(7) *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.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.411–40 Fundamental requirement.

(a) The contractor shall have, and consistently apply, written statements of accounting policies and practices for accumulating the costs of material and for allocating costs of material to cost objectives.

(b) The cost of units of a category of material may be allocated directly to a cost objective provided the cost objective was specifically identified at the time of purchase or production of the units.

(c) The cost of material which is used solely in performing indirect functions, or is not a significant element of production cost, whether or not incorporated in an end product, may be allocated to an indirect cost pool. When significant, the cost of such indirect material not consumed in a cost accounting period shall be established as an asset at the end of the period.

(d) Except as provided in paragraphs (b) and (c) of this subsection, the cost of a category of materials shall be accounted for in material inventory records.

(e) In allocating to cost objectives the costs of a category of material issued from company-owned material inventory, the costing method used

shall be selected in accordance with the provisions of 9904.411–50, and shall be used in a manner which results in systematic and rational costing of issues of material to cost objectives. The same costing method shall, within the same business unit, be used for similar categories of materials.

9904.411–50 Techniques for application.

(a) Material cost shall be the acquisition cost of a category of material, whether or not a material inventory record is used. The purchase price of material shall be adjusted by extra charges incurred or discounts and credits earned. Such adjustments shall be charged or credited to the same cost objective as the purchase price of the material, except that where it is not practical to do so, the contractor's policy may provide for the consistent inclusion of such charges or credits in an appropriate indirect cost pool.

(b) One of the following inventory costing methods shall be used when issuing material from a company-owned inventory:

(1) The first-in, first-out (FIFO) method.

(2) The moving average cost method.

(3) The weighted average cost method.

(4) The standard cost method.

(5) The last-in, first-out (LIFO) method.

(c) The method of computation used for any inventory costing method selected pursuant to the provisions of this Standard shall be consistently followed.

(d) Where the excess of the ending inventory over the beginning inventory of material of the type described in 9904.411–40(c) is estimated to be significant in relation to the total cost included in the indirect cost pool, the cost of such unconsumed material shall be established as an asset at the end of the period by reducing the indirect cost pool by a corresponding amount.

9904.411–60 Illustrations.

(a) Contractor ''A'' has one contract which requires two custom-ordered, high-value, airborne cameras. The contractor's established policy is to order such special items specifically identified to a contract as the need arises and to charge them directly to the contract. Another contract is received which requires three more of these cameras, which the contractor purchases at a unit cost which differs from the unit cost of the first two cameras ordered. When the purchase orders were placed, the contractor identified the specific contracts on which the cameras being purchased were to be used. Although these cameras are identical, the actual cost of each camera is charged to the contract for which it was acquired without establishing a material inventory record. This practice would not be a violation of this Standard.

(b)(1) A Government contract requires use of electronic tubes identified as ''W.'' The contractor expects to receive other contracts requiring the use of tubes of the same type. In accordance with its written policy, the contractor establishes a material inventory record for electronic tube ''W,'' and allocates the cost of units issued to the existing Government contract by the FIFO method. Such a practice would conform to the requirements of this Standard.

(2) The contractor is awarded several additional contracts which require an electronic tube which the contractor concludes is similar to the one described in paragraph (b)(1) of this subsection and which is identified as ''Y.'' At the time a purchase order for these tubes is written, the contractor cannot identify the specific number of tubes to be used on each contract. Consequently, the contractor establishes an inventory record for these tubes and allocates their cost to the contracts on an average cost method. Because a FIFO method is used for a similar category of material within the same business unit, the use of an average cost method for ''Y'' would be a violation of this Standard.

(c) A contractor complies with the Cost Accounting Standard on standard costs (9904.407), and he uses a standard cost method for allocating the costs of essentially all categories of material. Also, it is the contractor's established practice to charge the cost of purchased parts which are incorporated in his end products, and which are not a

significant element of production cost to an indirect cost pool. Such practices conform to this Standard.

(d) A contractor has one established inventory for type ''R'' transformers. The contractor allocates by the LIFO method the current costs of the individual units issued to Government contracts. Such a practice would conform to the requirements of this Standard.

(e) A contractor has established inventories for various categories of material which are used on Government contracts. During the year the contractor allocates the costs of the units of the various categories of material issued to contracts by the moving average cost method. The contractor uses the LIFO method for tax and financial reporting purposes and, at year end, applies a pooled LIFO inventory adjustment for all categories of material to Government contracts. This application of pooled costs to Government contracts would be a violation of this Standard because the lump sum adjustment to all of the various categories of material is, in effect, a noncurrent repricing of the material issues.

9904.411–61 Interpretation. [Reserved]

9904.411–62 Exemption.

None for this Standard.

9904.411–63 Effective date.

This Standard is effective as of April 17, 1992. Contracts with prior CAS-covered contract with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.412 Cost accounting standard for composition and measurement of pension cost.

9904.412–10 [Reserved]

9904.412–20 Purpose.

The purpose of this Standard is to provide guidance for determining and measuring the components of pension cost. The Standard establishes the basis on which pension costs shall be assigned to cost accounting periods. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs and thereby increase the probability that those costs are properly allocated to cost objectives.

9904.412–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *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; that is, 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.)

(2) *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.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost; for example, mortality

rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *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 which 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.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *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.

(7) *Assignable cost credit* means the decrease in unfunded actuarial liability that results when the pension cost computed for a cost accounting period is less than zero.

(8) *Assignable cost deficit* means the increase in unfunded actuarial liability that results when the pension cost computed for a qualified defined-benefit pension plan exceeds the maximum tax-deductible amount for the cost accounting period determined in accordance with the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, as amended.

(9) *Assignable cost limitation* means the excess, if any, of the actuarial accrued liability plus the current normal cost over the actuarial value of the assets of the pension plan.

(10) *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.

(11) *Defined-contribution pension plan* means a pension plan in which the contributions are established in advance and the benefits are determined thereby.

(12) *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.

(13) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(14) *Immediate-gain actuarial cost method* means any of the several 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.

(15) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(16) *Multiemployer pension plan* means a plan to which more than one employer contributes and which is maintained pursuant to one or more collective bargaining agreements between an employee organization and more than one employer.

(17) *Nonforfeitable* means a right to a pension benefit, either immediate or deferred, which arises from an employee's service, which is unconditional, and which is legally enforceable against the pension plan or the contractor. Rights to benefits that do not satisfy this definition are considered forfeitable. A right to a pension benefit is not forfeitable solely because it may be affected by the employee's or beneficiary's death, disability, or failure to achieve vesting requirements. Nor is a right considered forfeitable because it can be affected by the unilateral actions of the employee.

(18) *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.

(19) *Pay-as-you-go cost method* means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

(20) *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 retirement, 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.

(21) *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.

(22) *Permitted unfunded accrual* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(23) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for interest at the valuation rate and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(24) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(25) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which 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.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

[57 FR 14153, Apr. 17, 1992, as amended at 60 FR 16540, Mar. 30, 1995]

9904.412–40 Fundamental requirement.

(a) *Components of pension cost.* (1) For defined-benefit pension plans, except for plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are (i) the normal cost of the period, (ii) a part of any unfunded actuarial liability, (iii) an interest equivalent on the unamortized portion of any unfunded actuarial liability, and (iv) an adjustment for any actuarial gains and losses.

(2) For defined-contribution pension plans, the pension cost for a cost accounting period is the net contribution required to be made for that period, after taking into account dividends and other credits, where applicable.

(3) For defined-benefit pension plans accounted for under the pay-as-you-go cost method, the components of pension cost for a cost accounting period are:

(i) The net amount of periodic benefits paid for that period, and

(ii) An amortization installment, including an interest equivalent on the unamortized settlement amount, attributable to amounts paid to irrevocably settle an obligation for periodic

benefits due in current and future cost accounting periods.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount of pension cost of a cost accounting period shall be determined by use of an immediate-gain actuarial cost method.

(2) Each actuarial assumption used to measure pension cost shall be separately identified and shall represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations. The validity of each assumption used shall be evaluated solely with respect to that assumption. Actuarial assumptions used in calculating the amount of an unfunded actuarial liability shall be the same as those used for other components of pension cost.

(c) *Assignment of pension cost.* Except costs assigned to future periods by 9904.412–50(c) (2) and (5), the amount of pension cost computed for a cost accounting period is assignable only to that period. For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the pension cost is assignable only if the sum of (1) the unamortized portions of assignable unfunded actuarial liability developed and amortized pursuant to 9904.412–50(a)(1), and (2) the unassignable portions of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2) equals the total unfunded actuarial liability.

(d) *Allocation of pension cost.* Pension costs assigned to a cost accounting period are allocable to intermediate and final cost objectives only if they meet the requirements for allocation in 9904.412–50(d). Pension costs not meeting these requirements may not be reassigned to any future cost accounting period.

[60 FR 16541, Mar. 30, 1995]

9904.412–50 Techniques for application.

(a) *Components of pension cost.* (1) The following portions of unfunded actuarial liability shall be included as a separately identified part of the pension cost of a cost accounting period and shall be included in equal annual installments. Each installment shall consist of an amortized portion of the unfunded actuarial liability plus an interest equivalent on the unamortized portion of such liability. The period of amortization shall be established as follows:

(i) If amortization of an unfunded actuarial liability has begun prior to the date this Standard first becomes applicable to a contractor, no change in the amortization period is required by this Standard.

(ii) If amortization of an unfunded actuarial liability has not begun prior to the date this Standard first becomes applicable to a contractor, the amortization period shall begin with the period in which the Standard becomes applicable and shall be no more than 30 years nor less than 10 years. However, if the plan was in existence as of January 1, 1974, the amortization period shall be no more than 40 years nor less than 10 years.

(iii) Each increase or decrease in unfunded actuarial liability resulting from the institution of new pension plans, from the adoption of improvements, or other changes to pension plans subsequent to the date this Standard first becomes applicable to a contractor shall be amortized over no more than 30 years nor less than 10 years.

(iv) If any assumptions are changed during an amortization period, the resulting increase or decrease in unfunded actuarial liability shall be separately amortized over no more than 30 years nor less than 10 years.

(v) Actuarial gains and losses shall be identified separately from unfunded actuarial liabilities that are being amortized pursuant to the provisions of this Standard. The accounting treatment to be afforded to such gains and losses shall be in accordance with Cost Accounting Standard 9904.413.

(vi) Each increase or decrease in unfunded actuarial liability resulting from an assignable cost deficit or credit, respectively, shall be amortized over a period of 10 years.

(vii) Each increase or decrease in unfunded actuarial liability resulting

from a change in actuarial cost method, including the asset valuation method, shall be amortized over a period of 10 to 30 years. This provision shall not affect the requirements of 9903.302 to adjust previously priced contracts.

(2) Except as provided in 9904.412–50(d)(2), any portion of unfunded actuarial liability attributable to either (i) pension costs applicable to prior years that were specifically unallowable in accordance with then existing Government contractual provisions or (ii) pension costs assigned to a cost accounting period that were not funded in that period, shall be separately identified and eliminated from any unfunded actuarial liability being amortized pursuant to paragraph (a)(1) of this subsection. Such portions of unfunded actuarial liability shall be adjusted for interest at the valuation rate of interest. The contractor may elect to fund, and thereby reduce, such portions of unfunded actuarial liability and future interest adjustments thereon. Such funding shall not be recognized for purposes of 9904.412–50(d).

(3) A contractor shall establish and consistently follow a policy for selecting specific amortization periods for unfunded actuarial liabilities, if any, that are developed under the actuarial cost method in use. Such policy may give consideration to factors such as the size and nature of the unfunded actuarial liabilities. Except as provided in 9904.412–50(c)(2) or 9904.413–50(c)(12), once the amortization period for a portion of unfunded actuarial liability is selected, the amortization process shall continue to completion.

(4) Any amount funded in excess of the pension cost assigned to a cost accounting period shall be accounted for as a prepayment credit. The accumulated value of such prepayment credits shall be adjusted for interest at the valuation rate of interest until applied towards pension cost in a future accounting period. The accumulated value of prepayment credits shall be reduced for portions of the accumulated value of prepayment credits used to fund pension costs or to fund portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2). The accumulated value of any prepayment credits shall be excluded from the actuarial value of the assets used to compute pension costs for purposes of this Standard and Cost Accounting Standard 9904.413.

(5) An excise tax assessed pursuant to a law or regulation because of excess, inadequate, or delayed funding of a pension plan is not a component of pension cost. Income taxes paid from the funding agency of a nonqualified defined-benefit pension plan on earnings or other asset appreciation of such funding agency shall be treated as an administrative expense of the fund and not as a reduction to the earnings assumption.

(6) For purposes of this Standard, defined-benefit pension plans funded exclusively by the purchase of individual or group permanent insurance or annuity contracts, and thereby exempted from ERISA's minimum funding requirements, shall be treated as defined-contribution pension plans. However, all other defined-benefit pension plans administered wholly or in part through insurance company contracts shall be subject to the provisions of this Standard relative to defined-benefit pension plans.

(7) If a pension plan is supplemented by a separately-funded plan which provides retirement benefits to all of the participants in the basic plan, the two plans shall be considered as a single plan for purposes of this Standard. If the effect of the combined plans is to provide defined-benefits for the plan participants, the combined plans shall be treated as a defined-benefit plan for purposes of this Standard.

(8) A multiemployer pension plan established pursuant to the terms of a collective bargaining agreement shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(9) A pension plan applicable to a Federally-funded Research and Development Center (FFRDC) that is part of a State pension plan shall be considered to be a defined-contribution pension plan for purposes of this Standard.

(b) *Measurement of pension cost.* (1) For defined-benefit pension plans other than those accounted for under the pay-as-you-go cost method, the amount

of pension cost assignable to cost accounting periods shall be measured by an immediate-gain actuarial cost method.

(2) Where the pension benefit is a function of salaries and wages, the normal cost shall be computed using a projected benefit cost method. The normal cost for the projected benefit shall be expressed either as a percentage of payroll or as an annual accrual based on the service attribution of the benefit formula. Where the pension benefit is not a function of salaries and wages, the normal cost shall be based on employee service.

(3) For defined-benefit plans accounted for under the pay-as-you-go cost method, the amount of pension cost assignable to a cost accounting period shall be measured as the sum of:

(i) The net amount for any periodic benefits paid for that period, and

(ii) The level annual installment required to amortize over 15 years any amounts paid to irrevocably settle an obligation for periodic benefits due in current or future cost accounting periods.

(4) Actuarial assumptions shall reflect long-term trends so as to avoid distortions caused by short-term fluctuations.

(5) Pension cost shall be based on provisions of existing pension plans. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, or from considering improved benefits for plans which provide that such improved benefits must be made.

(6) If the evaluation of the validity of actuarial assumptions shows that any assumptions were not reasonable, the contractor shall:

(i) Identify the major causes for the resultant actuarial gains or losses, and

(ii) Provide information as to the basis and rationale used for retaining or revising such assumptions for use in the ensuing cost accounting period(s).

(c) *Assignment of pension cost.* (1) Amounts funded in excess of the pension cost computed for a cost accounting period pursuant to the provisions of this Standard shall be accounted for as a prepayment credit and carried forward to future accounting periods.

(2) For qualified defined-benefit pension plans, the pension cost computed for a cost accounting period is assigned to that period subject to the following adjustments, in order of application:

(i) Any amount of computed pension cost that is less than zero shall be assigned to future accounting periods as an assignable cost credit. The amount of pension cost assigned to the period shall be zero.

(ii) When the pension cost equals or exceeds the assignable cost limitation:

(A) The amount of computed pension cost, adjusted pursuant to paragraph (c)(2)(i) of this subsection, shall not exceed the assignable cost limitation,

(B) All amounts described in 9904.412–50(a)(1) and 9904.413–50(a), which are required to be amortized, shall be considered fully amortized, and

(C) Except for portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.413–50(a)(2), any portion of unfunded actuarial liability, which occurs in the first cost accounting period after the pension cost has been limited by the assignable cost limitation, shall be considered an actuarial gain or loss for purposes of this Standard. Such actuarial gain or loss shall exclude any increase or decrease in unfunded actuarial liability resulting from a plan amendment, change in actuarial assumptions, or change in actuarial cost method effected after the pension cost has been limited by the assignable cost limitation.

(iii) Any amount of computed pension cost of a qualified pension plan, adjusted pursuant to paragraphs (c)(2)(i) and (ii) of this subsection that exceeds the sum of (A) the maximum tax-deductible amount, determined in accordance with ERISA, and (B) the accumulated value of prepayment credits shall be assigned to future accounting periods as an assignable cost deficit. The amount of pension cost assigned to the current period shall not exceed the sum of the maximum tax-deductible amount plus the accumulated value of prepayment credits.

(3) The cost of nonqualified defined-benefit pension plans shall be assigned to cost accounting periods in the same manner as qualified plans (with the exception of paragraph (c)(2)(iii) of this

subsection) under the following conditions:

(i) The contractor, in disclosing or establishing his cost accounting practices, elects to have a plan so accounted for;

(ii) The plan is funded through the use of a funding agency; and,

(iii) The right to a pension benefit is nonforfeitable and is communicated to the participants.

(4) The costs of nonqualified defined-benefit pension plans that do not meet all of the requirements in 9904.412–50(c)(3) shall be assigned to cost accounting periods using the pay-as-you-go cost method.

(5) 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 shall not be assigned to the current period. Rather, such excess shall be treated as an assignable cost deficit, except that it shall be assigned to future cost accounting periods using the same amortization period as used for ERISA purposes.

(d) *Allocation of pension costs.* The amount of pension cost assigned to a cost accounting period allocated to intermediate and final cost objectives shall be limited according to the following criteria:

(1) Except for nonqualified defined-benefit plans, the costs of a pension plan assigned to a cost accounting period are allocable to the extent that they are funded.

(2) For nonqualified defined-benefit pension plans that meet the criteria set forth at 9904.412–50(c)(3), pension costs assigned to a cost accounting period are fully allocable if they are funded at a level at least equal to the percentage of the complement (i.e., 100% minus tax rate % = percentage of assigned cost to be funded) of the highest published Federal corporate income tax rate in effect on the first day of the cost accounting period. If the contractor is not subject to Federal income tax, the assigned costs are allocable to the extent such costs are funded. Funding at other levels and benefit payments of such plans are subject to the following:

(i) Funding at less than the foregoing levels shall result in proportional reductions of the amount of assigned cost that can be allocated within the cost accounting period.

(ii)(A) Payments to retirees or beneficiaries shall contain an amount drawn from sources other than the funding agency of the pension plan that is, at least, proportionately equal to the accumulated value of permitted unfunded accruals divided by an amount that is the market value of the assets of the pension plan excluding any accumulated value of prepayment credits.

(B) The amount of assigned cost of a cost accounting period that can be allocated shall be reduced to the extent that such payments are drawn in a higher ratio from the funding agency.

(iii) The permitted unfunded accruals shall be identified and accounted for year to year, adjusted for benefit payments directly paid by the contractor and for interest at the actual annual earnings rate on the funding agency balance.

(3) For nonqualified defined-benefit pension plans accounted for under the pay-as-you-go method, pension costs assigned to a cost accounting period are allocable in that period.

(4) Funding of pension cost shall be considered to have taken place within the cost accounting period if it is accomplished by the corporate tax filing date for such period including any permissible extensions thereto.

[60 FR 16542, Mar. 30, 1995, as amended at 61 FR 58011, Nov. 12, 1996]

9904.412–60 Illustrations.

(a) *Components of pension cost.* (1) Contractor A has insured pension plans for each of two small groups of employees. One plan is exclusively funded through a group permanent life insurance contract and is exempt from the minimum funding requirements of ERISA. The other plan is funded through a deposit administration contract, which is a form of group deferred annuity contract that is not exempt from ERISA's minimum funding requirements. Both plans provide for defined benefits. Pursuant to 9904.412–50(a)(6), for purposes of this Standard

the plan financed through a group permanent insurance contract shall be considered to be a defined-contribution pension plan; the net premium required to be paid for a cost accounting period (after deducting dividends and any credits) shall be the pension cost for that period. However, the deposit administration contract plan is subject to the provisions of this Standard that are applicable to defined-benefit plans.

(2) Contractor B provides pension benefits for certain hourly employees through a multiemployer defined-benefit plan. Under the collective bargaining agreement, the contractor pays six cents into the fund for each hour worked by the covered employees. Pursuant to 9904.412–50(a)(8), the plan shall be considered to be a defined-contribution pension plan. The payments required to be made for a cost accounting period shall constitute the assignable pension cost for that period.

(3) Contractor C provides pension benefits for certain employees through a defined-contribution pension plan. However, the contractor has a separate fund that is used to supplement pension benefits for all of the participants in the basic plan in order to provide a minimum monthly retirement income to each participant. Pursuant to 9904.412–50(a)(7), the two plans shall be considered as a single plan for purposes of this Standard. Because the effect of the supplemental plan is to provide defined-benefits for the plan's participants, the provisions of this Standard relative to defined-benefit pension plans shall be applicable to the combined plan.

(4) Contractor D provides supplemental benefits to key management employees through a nonqualified defined-benefit pension plan funded by a so-called ''Rabbi Trust.'' The trust agreement provides that Federal income taxes levied on the earnings of the Rabbi trust may be paid from the trust. The contractor's actuarial cost method recognizes the administrative expenses of the plan and trust, such as broker and attorney fees, by adding the prior year's expenses to the current year's normal cost. The income taxes paid by the trust on trust earnings shall be accorded the same treatment as any other administrative expense in accordance with 9904.412–50(a)(5).

(5) (i) Contractor E has been using the entry age normal actuarial cost method to compute pension costs. The contractor has three years remaining under a firm fixed price contract subject to this Standard. The contract was priced using the unfunded actuarial liability, normal cost, and net amortization installments developed using the entry age normal method. The contract was priced as follows:

ENTRY AGE NORMAL VALUES

Cost component	Year 1	Year 2	Year 3
Normal cost	$100,000	$105,000	$110,000
Amortization	50,000	50,000	50,000
Pension cost	150,000	155,000	160,000

(ii) The contractor, after notifying the cognizant Federal official, switches to the projected unit credit actuarial cost method. The unfunded actuarial liability and normal cost decreased when redetermined under the projected unit credit method. Pursuant to 9904.412–50(a)(1)(vii), the contractor determines that an annual installment credit of $20,000 will amortize the decrease in unfunded actuarial liability (UAL) over ten years. The following pension costs are determined under the projected unit credit method:

PROJECTED UNIT CREDIT VALUES

Cost component	Year 1	Year 2	Year 3
Normal cost	$80,000	$85,000	$90,000
Amortization:			
Prior method	50,000	50,000	50,000
UAL decrease	(20,000)	(20,000)	(20,000)
Pension cost	110,000	115,000	120,000

(iii) The change in cost method is a change in accounting method that decreased previously priced pension costs by $40,000 per year. In accordance with 9903.302, Contractor E shall adjust the cost of the firm fixed-price contract for the remaining three years by $120,000 ($40,000×3 years).

(6) Contractor F has a defined-benefit pension plan for its employees. Prior to being subject to this Standard the contractor's policy was to compute and fund as annual pension cost normal cost plus only interest on the unfunded actuarial liability. Pursuant to

9904.412–40(a)(1), the components of pension cost for a cost accounting period must now include not only the normal cost for the period and interest on the unfunded actuarial liability, but also an amortized portion of the unfunded actuarial liability. The amortization of the liability and the interest equivalent on the unamortized portion of the liability must be computed in equal annual installments.

(b) *Measurement of pension cost.* (1) Contractor G has a pension plan whose costs are assigned to cost accounting periods by use of an actuarial cost method that does not separately identify actuarial gains and losses or the effect on pension cost resulting from changed actuarial assumptions. Contractor G's method is not an immediate-gain cost method and does not comply with the provisions of 9904.412–50(b)(1).

(2) For several years Contractor H has had an unfunded nonqualified pension plan which provides for payments of $200 a month to employees after retirement. The contractor is currently making such payments to several retired employees and recognizes those payments as its pension cost. The contractor paid monthly annuity benefits totaling $24,000 during the current year. During the prior year, Contractor H made lump sum payments to irrevocably settle the benefit liability of several participants with small benefits. The annual installment to amortize these lump sum payments over fifteen years at the valuation interest rate assumption is $5,000. Since the plan does not meet the criteria set forth in 9904.412–50(c)(3)(ii), pension cost must be accounted for using the pay-as-you-go cost method. Pursuant to 9904.412–50(b)(3), the amount of assignable cost allocable to cost objectives of that period is $29,000, which is the sum of the amount of benefits actually paid in that period ($24,000) plus the second annual installment to amortize the prior year's lump sum settlements ($5,000).

(3) Contractor I has two qualified defined-benefit pension plans that provide for fixed dollar payments to hourly employees. Under the first plan, the contractor's actuary believes that the contractor will be required to increase the level of benefits by specified percentages over the next several years. In calculating pension costs, the contractor may not assume future benefits greater than that currently required by the plan. With regard to the second plan, a collective bargaining agreement negotiated with the employees' labor union provides that pension benefits will increase by specified percentages over the next several years. Because the improved benefits are required to be made, the contractor can consider such increased benefits in computing pension costs for the current cost accounting period in accordance with 9904.412–50(b)(5).

(4) In addition to the facts of 9904.412–60(b)(3), assume that Contractor I was required to contribute at a higher level for ERISA purposes because the plan was underfunded. To compute pension costs that are closer to the funding requirements of ERISA, Contractor I decides to ''fresh start'' the unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1); i.e., treat the entire amount as a newly established portion of unfunded actuarial liability, which is amortized over 10 years in accordance with 9904.412–50(a)(1)(ii). Because the contractor has changed the periods for amortizing the unfunded actuarial liability established pursuant to 9904.412–50(a)(3), the contractor has made a change in accounting practice subject to the provisions of Cost Accounting Standard 9903.302.

(c) *Assignment of pension cost.* (1) Contractor J maintains a qualified defined-benefit pension plan. The actuarial value of the assets of $18 million is subtracted from the actuarial accrued liability of $20 million to determine the total unfunded actuarial liability of $2 million. Pursuant to 9904.412–50(a)(1), Contractor J has identified and is amortizing twelve separate portions of unfunded actuarial liabilities. The sum of the unamortized balances for the twelve separately maintained portions of unfunded actuarial liability equals $1.8 million. In accordance with 9904.412–50(a)(2), the contractor has separately identified, and eliminated from the computation of pension cost, $200,000 attributable to a pension cost assigned to a prior period that was not

funded. The sum of the twelve amortization bases maintained pursuant to 9904.412–50(a)(1) and the amount separately identified under 9904.412–50(a)(2) equals $2 million ($1,800,000+200,000). Because the sum of all identified portions of unfunded actuarial liability equals the total unfunded actuarial liability, the plan is in actuarial balance and Contractor J can assign pension cost to the current cost accounting period in accordance with 9904.412–40(c).

(2) Contractor K's pension cost computed for 1996, the current year, is $1.5 million. This computed cost is based on the components of pension cost described in 9904.412–40(a) and 9904.412–50(a) and is measured in accordance with 9904.412–40(b) and 9904.412–50(b). The assignable cost limitation, which is defined at 9904.412–30(a)(9), is $1.3 million. In accordance with the provisions of 9904.412–50(c)(2)(ii)(A), Contractor K's assignable pension cost for 1996 is limited to $1.3 million. In addition, all amounts that were previously being amortized pursuant to 9904.412–50(a)(1) and 9904.413–50(a) are considered fully amortized in accordance with 9904.412–50(c)(2)(ii)(B). The following year, 1997, Contractor K computes an unfunded actuarial liability of $4 million. Contractor K has not changed his actuarial assumptions nor amended the provisions of his pension plan. Contractor K has not had any pension costs disallowed or unfunded in prior periods. Contractor K must treat the entire $4 million of unfunded actuarial liability as an actuarial loss to be amortized over fifteen years beginning in 1997 in accordance with 9904.412–50(c)(2)(ii)(C).

(3) Assume the same facts shown in illustration 9904.412–60(c)(2), except that in 1995, the prior year, Contractor K's assignable pension cost was $800,000, but Contractor K only funded and allocated $600,000. Pursuant to 9904.412–50(a)(2), the $200,000 of unfunded assignable pension cost was separately identified and eliminated from other portions of unfunded actuarial liability. This portion of unfunded actuarial liability was adjusted for 8% interest, which is the interest assumption for 1995 and 1996, and was brought forward to 1996 in accordance with 9904.412–50(a)(2). Therefore, $216,000 ($200,000×1.08) is excluded from the amount considered fully amortized in 1996. The next year, 1997, Contractor K must eliminate $233,280 ($216,000×1.08) from the $4 million so that only $3,766,720 is treated as an actuarial loss in accordance with 9904.412–50(c)(2)(ii)(C).

(4) Assume, as in 9904.412–60(c)(2), the 1996 pension cost computed for Contractor K's qualified defined-benefit pension plan is $1.5 million and the assignable cost limitation is $1.7 million. However, because of the ERISA limitation on tax-deductible contributions, Contractor K cannot fund more than $1 million without incurring an excise tax, which 9904.412–50(a)(5) does not permit to be a component of pension cost. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $500,000 ($1.5 million−$1 million) of pension cost not funded is reassigned to the next ten cost accounting periods beginning in 1997 as an assignable cost deficit in accordance with 9904.412–50(a)(1)(vi).

(5) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the accumulated value of prepayment credits equals $700,000. Therefore, in addition to the $1 million, Contractor K can apply $500,000 of the accumulated value of prepayment credits towards the pension cost computed for the period. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is the full $1.5 million ($1 million+$500,000) computed for the period. The $200,000 of remaining accumulated value of prepayment credits ($700,000−$500,000) is adjusted for interest at the valuation rate and carried forward until needed in future accounting periods in accordance with 9904.412–50(a)(4).

(6) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the 1996 assignable cost limitation is $1.3 million. Pension cost of $1.5 million is computed for the cost accounting period, but the assignable cost is limited to $1.3 million in accordance with 9904.412–50(c)(2)(ii)(A). Pursuant to 9904.412–50(c)(2)(ii)(B), all existing amortization bases maintained in accordance with subparagraph 9904.412–50(a)(1)

are considered fully amortized. The assignable cost of $1.3 million is then compared to the maximum tax-deductible amount of $1 million. Pursuant to 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $300,000 ($1.3 million−$1 million) excess of the assignable cost limitation over the tax-deductible maximum is assigned to future periods as an assignable cost deficit.

(7) Contractor L is currently amortizing a large decrease in unfunded actuarial liability over a period of ten years. A similarly large increase in unfunded actuarial liability is being amortized over 30 years. The absolute value of the resultant net amortization credit is greater than the normal cost so that the pension cost computed for the period is a negative $200,000. Contractor L first applies the provisions of 9904.412–50(c)(2)(i) and determines the assignable pension cost is $0. The negative pension cost of $200,000 is assigned to the next ten cost accounting periods as an assignable cost credit in accordance with 9904.412–50(a)(1)(vi). However, when Contractor L applies the provisions of 9904.412–50(c)(2)(ii), the assignable cost limitation is also $0. Because the assignable cost of $0 determined under 9904.412–50(c)(2)(i) is equal to the assignable cost limitation, the assignable cost credit of $200,000 is considered fully amortized along with all other portions of unfunded actuarial liability being amortized pursuant to 9904.412–50(a)(1). Conversely, if the assignable cost limitation had been greater than zero, the assignable cost credit of $200,000 would have carried-forward and amortized in future periods.

(8) Contractor M has a qualified defined-benefit pension plan which is funded through a funding agency. It computes $1 million of pension cost for a cost accounting period. However, pursuant to a waiver granted under the provisions of ERISA, Contractor M is required to fund only $800,000. Under the provisions of 9904.412–50(c)(5), the remaining $200,000 shall be accounted for as an assignable cost deficit and assigned to the next five cost accounting periods in accordance with the terms of the waiver.

(9) Contractor N has a company-wide defined-benefit pension plan, wherein benefits are calculated on one consistently applied formula. That part of the formula defining benefits within ERISA limits is administered and reported as a qualified plan and funded through a funding agency. The remainder of the benefits are considered to be a supplemental or excess plan which, while it meets the criteria at 9904.412–50(c)(3)(iii) as to nonforfeitability and communication, is not funded. The costs of the qualified portion of the plan shall be comprised of those elements of costs delineated at 9904.412–40(a)(1), while the supplemental or excess portion of the plan shall be accounted for and assigned to cost accounting periods under the pay-as-you-go cost method provided at 9904.412–40(a)(3) and 9904.412–50(c)(4).

(10) Assuming the same facts as in 9904.412–60(c)(9), except that Contractor N funds its supplemental or excess plan using a so-called ''Rabbi Trust'' vehicle. Because the nonqualified plan is funded, the plan meets the criteria set forth at 9904.412–50(c)(3)(ii). Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so pursuant to 9904.412–50(c)(3)(i).

(11) Assuming the same facts as in 9904.412–60(c)(10), except that under the nonqualified portion of the pension plan a former employee will forfeit his pension benefit if the employee goes to work for a competitor within three years of terminating employment. Since the right to a benefit cannot be affected by the unilateral action of the contractor, the right to a benefit is considered to be nonforfeitable for purposes of 9904.412–30(a)(17). The nonqualified plan still meets the criteria set forth at 9904.412–50(c)(3)(iii), and Contractor N may account for the supplemental or excess plan in the same manner as its qualified plan, if it elects to do so.

(12) Assume the same facts as in 9904.412–60(c)(11), except that Contractor N, while maintaining a ''Rabbi Trust'' funding vehicle elects to have the plan accounted for under the pay-as-you-go cost method so as to have

greater latitude in annual funding decisions. It may so elect pursuant to 9904.412–50(c)(3)(i).

(13) The assignable pension cost for Contractor O's qualified defined-benefit plan is $600,000. For the same period Contractor O contributes $700,000, which is the minimum funding requirement under ERISA. In addition, there exists $75,000 of unfunded actuarial liability that has been separately identified pursuant to 9904.412–50(a)(2). Contractor O may use $75,000 of the contribution in excess of the assignable pension cost to fund this separately identified unfunded actuarial liability, if he so chooses. The effect of the funding is to eliminate the unassignable $75,000 portion of unfunded actuarial liability that had been separately identified and thereby eliminated from the computation of pension costs. Contractor O shall then account for the remaining $25,000 of excess contribution as a prepayment credit in accordance with 9904.412–50(a)(4).

(d) *Allocation of pension cost.* (1) Assume the same set of facts for Contractor M in 9904.412–60(c)(8) except there was no ERISA waiver; i.e., only $800,000 was funded against $1 million of assigned pension cost for the period. Under the provisions of 9904.412–50(d)(1), only $800,000 may be allocated to Contractor M's intermediate and final cost objectives. The remaining $200,000 of assigned cost, which has not been funded, shall be separately identified and maintained in accordance with 9904.412–50(a)(2) so that it will not be reassigned to any future accounting periods.

(2) Contractor P has a nonqualified defined-benefit pension plan which covers benefits in excess of the ERISA limits. Contractor P has elected to account for this plan in the same manner as its qualified plan and, therefore, has established a ''Rabbi Trust'' as the funding agency. For the current cost accounting period, the contractor computes and assigns $100,000 as pension cost. The contractor funds $65,000, which is equivalent to a funding level equal to the complement of the highest published Federal corporate income tax rate of 35%. Under the provisions of 9904.412–50(d)(2), the entire $100,000 is allocable to cost objectives of the period.

(3) Assume the set of facts in 9904.412–60(d)(2), except that Contractor P's contribution to the Trust is $59,800. In that event, the provisions of 9904.412–50(d)(2)(i) would limit the amount of assigned cost allocable within the cost accounting period to the percentage of cost funded (i.e., $59,800/$65,000 = 92%). This results in allocable cost of $92,000 (92% of $100,000) for the cost accounting period. Under the provisions of 9904.412–40(c) and 9904.412–50(d)(2)(i), respectively, the unallocable $8,000 may not be assigned to any future cost accounting period. In addition, in accordance with 9904.412–50(a)(2), the $8,000 must be separately identified and no amount of interest on such separately identified $8,000 shall be a component of pension cost in any future cost accounting period.

(4) Again, assume the set of facts in 9904.412–60(d)(2) except that, Contractor P's contribution to the Trust is $105,000 based on a valuation interest assumption of 8%. Under the provisions of 9904.412–50(d)(2) the entire $100,000 is allocable to cost objectives of the period. In accordance with the provisions of 9904.412–50(c)(1) Contractor P has funded $5,000 ($105,000—$100,000) in excess of the assigned pension cost for the period. The $5,000 shall be accounted for as a prepayment credit. Pursuant to 9904.412–50(a)(4), the $5,000 shall be adjusted for interest at the 8% valuation rate of interest and excluded from the actuarial value of assets used to compute the next year's pension cost computations. The accumulated value of prepayment credits of $5,400 (5,000 × 1.08) may be used to fund the next year's assigned pension cost, if needed.

(5) Contractor Q maintains a nonqualified defined-benefit pension plan which satisfies the requirements of 9904.412–50(c)(3). As of the valuation date, the reported funding agency balance is $3.4 million excluding any accumulated value of prepayment credits. When the adjusted funding agency balance is added to the accumulated value of permitted unfunded accruals of $1.6 million, the market value of assets equals $5.0 million ($3.4 million + $1.6 million) in accordance with 9904.412–30(a)(13). During the plan year, retirees

receive monthly benefits totalling $350,000. Pursuant to 9904.412–50(d)(2)(ii)(A), at least 32% ($1.6 million divided by $5 million) of these benefit payments shall be made from sources other than the funding agency. Contractor Q, therefore, draws $238,000 from the funding agency assets and pays the remaining $112,000 using general corporate funds.

(6) Assume the same facts as 9904.412–60(d)(5), except that by the time Contractor Q receives its actuarial valuation it has paid retirement benefits equalling $288,000 from funding agency assets. The contractor has made deposits to the funding agency equal to the tax complement of the $500,000 assignable pension cost for the period. Pursuant to 9904.412–50(d)(2)(ii)(B), the assignable $500,000 shall be reduced by the $50,000 ($288,000—$238,000) of benefits paid from the funding agency in excess of the permitted $238,000, unless the contractor makes a deposit to replace the $50,000 inadvertently drawn from the funding agency. If this corrective action is not taken within the time permitted by 9904.412–50(d)(4), Contractor Q shall allocate only $450,000 ($500,000–$50,000) to final cost objectives. Furthermore, the $50,000, which was thereby attributed to benefit payments instead of funding, must be separately identified and maintained in accordance with 9904.412–50(a)(2).

(7) Contractor R has a nonqualified defined-benefit plan that meets the criteria of 9904.412–50(c)(3). For 1996, the funding agency balance was $1,250,000 and the accumulated value of permitted unfunded accruals was $600,000. During 1996 the earnings and appreciation on the assets of the funding agency equalled $125,000, benefit payments to participants totalled $300,000, and administrative expenses were $60,000. All transactions occurred on the first day of the period. In accordance with 9904.412–50(d)(2)(ii)(A), $200,000 of benefits were paid from the funding agency and $100,000 were paid directly from corporate assets. Pension cost of $400,000 was assigned to 1996. Based on the current corporate tax rate of 35%, $260,000 ($400,000 × (1–35%)) was deposited into the funding agency at the beginning of 1996. For 1997 the funding agency balance is $1,375,000 ($1,250,000 + $260,000 + $125,000—$200,000—$60,000). The actual annual earnings rate of the funding agency was 10% for 1996. Pursuant to 9904.412–50(d)(2)(iii), the accumulated value of permitted unfunded accruals is updated from 1996 to 1997 by: (i) adding $140,000 (35% × $400,000), which is the unfunded portion of the assigned cost; (ii) subtracting the $100,000 of benefits paid directly by the contractor; and (iii) increasing the value of the assets by $64,000 for imputed earnings at 10% (10% × ($600,000 + $140,000—$100,000)). The accumulated value of permitted unfunded accruals for 1997 is $704,000 ($600,000 + $140,000—$100,000 + $64,000).

[60 FR 16544, Mar. 30, 1995]

9904.412–61 Interpretation. [Reserved]

9904.412–62 Exemption.

None for this Standard.

9904.412–63 Effective date.

(a) This Standard is effective as of March 30, 1995.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow the Standard in 9904.412 in effect prior to March 30, 1995, until this Standard, effective March 30, 1995, becomes applicable following receipt of a contract or subcontract to which this Standard applies.

[60 FR 16547, Mar. 30, 1995]

9904.412–64 Transition method.

To be acceptable, any method of transition from compliance with Standard 9904.412 in effect prior to March 30, 1995, to compliance with the Standard effective March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised methods. Conversely, costs that have not previously been provided for must be provided for

under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA tax-deductibility limitations. The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.412, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the provisions of 9904.412–40(c) on requirements for assignment. The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of Standard 9904.412, effective March 30, 1995, and shall be approved by the contracting officer. Examples and illustrations of such transition methods include, but are not limited to, the following:

(a) *Reassignment of certain prior unfunded accruals.* (1) Any portion of pension cost for a qualified defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, which was not funded because such cost exceeded the maximum tax-deductible amount, determined in accordance with ERISA, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost deficit. However, such costs shall be assigned to periods on or after March 30, 1995, only to the extent that such costs have not previously been allocated as cost or price to contracts subject to this Standard.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (a)(1) of this subsection.

(b) *Reassignment of certain prior unallocated credits.* (1) Any portion of pension cost for a defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, which was not allocated as a cost or price credit to contracts subject to this Standard because such cost was less than zero, shall be assigned to subsequent accounting periods, including an adjustment for interest, as an assignable cost credit.

(2) Alternatively, the transition method described in paragraph (d) of this subsection may be applied separately to costs subject to paragraph (b)(1) of this subsection.

(c) *Accounting for certain prior allocated unfunded accruals.* Any portion of unfunded pension cost for a nonqualified defined-benefit pension plan, assigned to a cost accounting period prior to March 30, 1995, that was allocated as cost or price to contracts subject to this Standard, shall be recognized in subsequent accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals.

(d) *''Fresh start'' alternative transition method.* The transition methods of paragraphs (a)(1), (b)(1), and (c) of this subsection may be implemented using the so-called ''fresh start'' method whereby a portion of the unfunded actuarial liability of a defined-benefit pension plan, which occurs in the first cost accounting period after March 30, 1995, shall be treated in the same manner as an actuarial gain or loss. Such portion of unfunded actuarial liability shall exclude any portion of unfunded actuarial liability that must continue to be separately identified and maintained in accordance with 9904.412–50(a)(2), including interest adjustments. If the contracting officer already has approved a different amortization period for the fresh start amortization, then such amortization period shall continue.

(e) *Change to pay-as-you-go method.* A change in accounting method subject to 9903.302 will have occurred whenever costs of a nonqualified defined-benefit pension plan have been accounted for on an accrual basis prior to March 30, 1995, and the contractor must change to the pay-as-you-go cost method because the plan does not meet the requirement of 9904.412–50(c)(3), either by election or otherwise. In such case, any portion of unfunded pension cost, assigned to a cost accounting period prior to March 30, 1995 that was allocated as cost or price to contracts subject to this Standard, shall be assigned to future accounting periods, including adjustments for imputed interest and benefit payments, as an accumulated value of permitted unfunded accruals. Costs computed under the pay-as-you-

go cost method shall be charged against such accumulated value of permitted unfunded accruals before such costs may be allocated to contracts.

(f) *Actuarial assumptions.* The actuarial assumptions used to calculate assignable cost deficits, assignable cost credits, or accumulated values of permitted unfunded accruals for transition purposes shall be consistent with the long term assumptions used for valuation purposes for such prior periods unless the contracting officer has previously approved the use of other reasonable assumptions.

(g) *Transition illustrations.* Unless otherwise noted, paragraphs (g) (1) through (9) of this subsection address pension costs and transition amounts determined for the first cost accounting period beginning on or after the date this revised Standard becomes applicable to a contractor. For purposes of these illustrations an interest assumption of 7% is presumed to be in effect for all periods.

(1) For the cost accounting period immediately preceding the date this revised Standard was applicable to a contractor, Contractor S computed and assigned pension cost of $1 million for a qualified defined-benefit pension plan. The contractor made a contribution equal to the maximum tax-deductible amount of $800,000 for the period leaving $200,000 of assigned cost unfunded for the period. Except for this $200,000, no other assigned pension costs have ever been unfunded or otherwise disallowed. Using the transition method of paragraph (a)(1) of this subsection, the contractor shall establish an assignable cost deficit equal to $214,000 ($200,000 × 1.07), which is the prior unfunded assigned cost plus interest. If this assignable cost deficit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the current period.

(2) Assume that Contractor S in 9904.412–64(g)(1) priced the entire $1 million into firm fixed-price contracts. In this case, no assignable cost deficit amount may be established. In addition, the $214,000 ($200,000 × 1.07) shall be separately identified and maintained in accordance with 9904.412–50(a)(2). If all portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(3) Assume the same facts as in 9904.412–64(g)(1), except Contractor S only funded and allocated $500,000. The $300,000 of assigned cost that was not funded, but could have been funded without exceeding the tax-deductible maximum, may not be recognized as an assignable cost deficit. Instead, the $300,000 must be separately identified and maintained in accordance with 9904.412–50(a)(2). If the $321,000 ($300,000 × 1.07) plus the $214,000 already identified as an assignable cost deficit plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equal the total unfunded actuarial liability, pension cost may be assigned to the period.

(4) Assume that, for Contractor S in 9904.412–64(g)(3), the only portion of unfunded actuarial liability that must be identified under 9904.412–50(a)(2) is the $321,000. If Contractor S chooses to use the ''fresh start'' transition method, the $321,000 of unfunded assigned cost must be subtracted from the total unfunded actuarial liability in accordance with 9904.412–63(d). The net amount of unfunded actuarial liability shall then be amortized over a period of fifteen years as an actuarial loss in accordance with 9904.412–50(a)(1)(v) and Cost Accounting Standard 9904.413.

(5) For the cost accounting period immediately preceding the date this revised Standard becomes applicable to a contractor, Contractor T computed and assigned pension cost of negative $400,000 for a qualified defined-benefit plan. Because the contractor could not withdraw assets from the trust fund, the contracting officer agreed that instead of allocating a current period credit to contracts, the negative costs would be carried forward, with interest, and offset against future pension costs allocated to the contract. Using the transition method of paragraph (b)(1) of this subsection, the contractor shall establish an assignable cost credit equal to $428,000 ($400,000 × 1.07). If

this assignable cost credit amount, plus all other portions of unfunded actuarial liability identified in accordance with 9904.412–50(a) (1) and (2), equals the total unfunded actuarial liability, pension cost may be assigned to the period.

(6) Assume that in 9904.412–64(g)(5), following guidance issued by the contracting agency the contracting officer had deemed the cost for the prior period to be $0. In order to satisfy the requirements of 9904.412–40(c) and assign pension cost to the current period, Contractor S must account for the prior period negative accruals that have not been specifically identified. Following the transition method of paragraph (b)(1) of this subsection, the contractor shall identify $428,000 as an assignable cost credit.

(7) Assume the facts of 9904.412–64(g)(5), except Contractor S uses the ''fresh start'' transition method. In addition, for the current period the plan is overfunded since the actuarial value of the assets is greater than the actuarial accrued liability. In this case, an actuarial gain equal to the negative unfunded actuarial liability; i.e., actuarial surplus, is recognized since there are no portions of unfunded actuarial liability that must be identified under 9904.412–50(a)(2).

(8) Since March 28, 1989 Contractor U has computed, assigned, and allocated pension costs for a nonqualified defined-benefit plan on an accrual basis. The value of these past accruals, increased for imputed interest at 7% and decreased for benefits paid by the contractor, is equal to $2 million as of the beginning of the current period. Contractor U elects to establish a ''Rabbi trust'' and the plan meets the other criteria at 9904.412–50(c)(3). Using the transition method of paragraph (c) of this subsection, Contractor U shall recognize the $2 million as the accumulated value of permitted unfunded accruals, which will then be included in the market value and actuarial value of the assets. Because the accumulated value of permitted unfunded accruals is exactly equal to the current period market value of the assets, 100% of benefits for the current period must be paid from sources other than the funding agency in accordance with 9904.412–50(d)(2)(ii).

(9) Assume that Contractor U in 9904.412–64(g)(8) establishes a funding agency, but elects to use the pay-as-you-go method for current and future pension costs. Furthermore, plan participants receive $500,000 in benefits on the last day of the current period. Using the transition method of paragraph (e) of this subsection to ensure prior costs are not redundantly provided for, the contractor shall establish assets; i.e., an accumulated value of permitted unfunded accruals, of $2 million. Since these assets are sufficient to provide for the current benefit payments, no pension costs can be allocated in this period. Furthermore, previously priced contracts subject to this Standard shall be adjusted in accordance with 9903.302. The accumulated value of permitted unfunded accruals shall be carried forward to the next period by adding $140,000 (7% x $2 million) of imputed interest, and subtracting the $500,000 of benefit payments made by the contractor. The accumulated value of permitted unfunded accruals for the next period equals $1,640,000 ($2 million + $140,000—$500,000).

[60 FR 16547, Mar. 30, 1995; 60 FR 20248, Apr. 25, 1995]

9904.413 Adjustment and allocation of pension cost.

9904.413–10 [Reserved]

9904.413–20 Purpose.

A purpose of this Standard is to provide guidance for adjusting pension cost by measuring actuarial gains and losses and assigning such gains and losses to cost accounting periods. The Standard also provides the bases on which pension cost shall be allocated to segments of an organization. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs.

9904.413–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meaning ascribed to them in those

definitions unless paragraph (b) of this subsection requires otherwise.

(1) *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; that is, 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.)

(2) *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.

(3) *Actuarial assumption* means an estimate of future conditions affecting pension cost; for example, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, changes in values of pension plan assets.

(4) *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 which 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.

(5) *Actuarial gain and loss* means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

(6) *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.

(7) *Curtailment of benefits* means an event; e.g., a plan amendment, in which the pension plan is frozen and no further material benefits accrue. Future service may be the basis for vesting of nonvested benefits existing at the time of the curtailment. The plan may hold assets, pay benefits already accrued, and receive additional contributions for unfunded benefits. Employees may or may not continue working for the contractor.

(8) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a pension plan, or for the purchase of such benefits, provided such accumulated assets form a part of a pension plan established for the exclusive benefit of the plan participants and their beneficiaries. The fair market value of the assets held by the funding agency as of a specified date is the Funding Agency Balance as of that date.

(9) *Immediate-gain actuarial cost method* means any of the several 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.

(10) *Market value of the assets* means the sum of the funding agency balance plus the accumulated value of any permitted unfunded accruals belonging to a pension plan. The Actuarial Value of the Assets means the value of cash, investments, permitted unfunded accruals, and other property belonging to a pension plan, as used by the actuary for the purpose of an actuarial valuation.

(11) *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.

(12) *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 retirement, 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.

(13) *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.

(14) *Pension plan termination* means an event; i.e., plan amendment, in which either the pension plan ceases to exist and all benefits are settled by purchase of annuities or other means, or the trusteeship of the plan is assumed by the Pension Benefit Guarantee Corporation or other conservator. The plan may or may not be replaced by another plan.

(15) *Permitted unfunded accruals* means the amount of pension cost for nonqualified defined-benefit pension plans that is not required to be funded under 9904.412–50(d)(2). The Accumulated Value of Permitted Unfunded Accruals means the value, as of the measurement date, of the permitted unfunded accruals adjusted for imputed earnings and for benefits paid by the contractor.

(16) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for interest at the valuation rate and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

(17) *Projected benefit cost method* means either (i) any of the several actuarial cost methods which distribute the estimated total cost of all of the employees' prospective benefits over a period of years, usually their working careers, or (ii) a modification of the accrued benefit cost method that considers projected compensation levels.

(18) *Qualified pension plan* means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees which 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.

(19) *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 Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority ownership, but over which it exercises control.

(20) *Segment closing* means that a segment has (i) been sold or ownership has been otherwise transferred, (ii) discontinued operations, or (iii) discontinued doing or actively seeking Government business under contracts subject to this Standard.

(21) *Termination of employment gain or loss* means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which plan participants separate from employment for reasons other than retirement, disability, or death.

(b) The following modifications of terms defined elsewhere in this chapter

99 are applicable to this Standard: None.

[57 FR 14153, Apr. 17, 1992, as amended at 60 FR 16549, Mar. 30, 1995]

9904.413–40 Fundamental requirement.

(a) Assignment of actuarial gains and losses. Actuarial gains and losses shall be calculated annually and shall be assigned to the cost accounting period for which the actuarial valuation is made and subsequent periods.

(b) *Valuation of the assets of a pension plan.* The actuarial value of the assets of a pension plan shall be determined under an asset valuation method which takes into account unrealized appreciation and depreciation of the market value of the assets of the pension plan, including the accumulated value of permitted unfunded accruals, and shall be used in measuring the components of pension costs.

(c) *Allocation of pension cost to segments.* Contractors shall allocate pension costs to each segment having participants in a pension plan. A separate calculation of pension costs for a segment is required when the conditions set forth in 9904.413–50(c)(2) or (3) are present. When these conditions are not present, allocations may be made by calculating a composite pension cost for two or more segments and allocating this cost to these segments by means of an allocation base. When pension costs are separately computed for a segment or segments, the provisions of Cost Accounting Standard 9904.412 regarding the assignable cost limitation shall be based on the assets and liabilities for the segment or segments for purposes of such computations. In addition, the amount of pension cost assignable to a segment or segments shall not exceed the maximum tax-deductible amount computed for the plan as a whole and apportioned among the segment(s).

[57 FR 14153, Apr. 17, 1992, as amended at 60 FR 16550, Mar. 30, 1995]

9904.413–50 Techniques for application.

(a) *Assignment of actuarial gains and losses.* (1) In accordance with the provisions of Cost Accounting Standard 9904.412, actuarial gains and losses shall be identified separately from other unfunded actuarial liabilities.

(2) Actuarial gains and losses determined under a pension plan whose costs are measured by an immediate-gain actuarial cost method shall be amortized over a 15 year period in equal annual installments, beginning with the date as of which the actuarial valuation is made. The installment for a cost accounting period shall consist of an element for amortization of the gain or loss plus an element for interest on the unamortized balance at the beginning of the period. If the actuarial gain or loss determined for a cost accounting period is not material, the entire gain or loss may be included as a component of the current or ensuing year's pension cost.

(3) Pension plan terminations and curtailments of benefits shall be subject to adjustment in accordance with 9904.413–50(c)(12).

(b) *Valuation of the assets of a pension plan.* (1) The actuarial value of the assets of a pension plan shall be used:

(i) In measuring actuarial gains and losses, and

(ii) For purposes of measuring other components of pension cost.

(2) The actuarial value of the assets of a pension plan may be determined by the use of any recognized asset valuation method which provides equivalent recognition of appreciation and depreciation of the market value of the assets of the pension plan. However, the actuarial value of the assets produced by the method used shall fall within a corridor from 80 to 120 percent of the market value of the assets, determined as of the valuation date. If the method produces a value that falls outside the corridor, the actuarial value of the assets shall be adjusted to equal the nearest boundary of the corridor.

(3) The method selected for valuing pension plan assets shall be consistently applied from year to year within each plan.

(4) The provisions of paragraphs (b)(1) through (3) of this subsection are not applicable to plans that are treated as defined-contribution plans in accordance with 9904.412–50(a)(6).

(5) The market and actuarial values of the assets of a pension plan shall not

be adjusted for any fee, reserve charge, or other investment charge for withdrawals from or termination of an investment contract, trust agreement, or other funding arrangement, unless such fee is determined in an arm's length transaction, and actually incurred and paid.

(c) *Allocation of pension cost to segments.* (1) For contractors who compute a composite pension cost covering plan participants in two or more segments, the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based. For example, a base consisting of salaries and wages shall be used for pension costs that are calculated as a percentage of salaries and wages; a base consisting of the number of participants shall be used for pension costs that are calculated as an amount per participant. If pension costs are separately calculated for one or more segments, the contractor shall make a distribution among the segments for the maximum tax-deductible amount and the contribution to the funding agency as follows:

(i) When apportioning the maximum tax-deductible amount, which is determined for a qualified defined-benefit pension plan as a whole pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, as amended, to segments, the contractor shall use a base that considers the otherwise assignable pension costs or the funding levels of the individual segments.

(ii) When apportioning amounts deposited to a funding agency to segments, contractors shall use a base that is representative of the assignable pension costs, determined in accordance with 9904.412–50(c) for the individual segments. However, for qualified defined-benefit pension plans, the contractor may first apportion amounts funded to the segment or segments subject to this Standard.

(2) Separate pension cost for a segment shall be calculated whenever any of the following conditions exist for that segment, provided that such condition(s) materially affect the amount of pension cost allocated to the segment:

(i) There is a material termination of employment gain or loss attributable to the segment,

(ii) The level of benefits, eligibility for benefits, or age distribution is materially different for the segment than for the average of all segments, or

(iii) The appropriate actuarial assumptions are, in the aggregate, materially different for the segment than for the average of all segments. Calculations of termination of employment gains and losses shall give consideration to factors such as unexpected early retirements, benefits becoming fully vested, and reinstatements or transfers without loss of benefits. An amount may be estimated for future reemployments.

(3) Pension cost shall also be separately calculated for a segment under circumstances where—

(i) The pension plan for that segment becomes merged with that of another segment, or the pension plan is divided into two or more pension plans, and in either case,

(ii) The ratios of market value of the assets to actuarial accrued liabilities for each of the merged or separated plans are materially different from one another after applying the benefits in effect after the pension plan merger or pension plan division.

(4) For a segment whose pension costs are required to be calculated separately pursuant to paragraphs (c) (2) or (3) of this subsection, such calculations shall be prospective only; pension costs need not be redetermined for prior years.

(5) For a segment whose pension costs are either required to be calculated separately pursuant to paragraph (c)(2) or (c)(3) of this subsection or calculated separately at the election of the contractor, there shall be an initial allocation of a share in the undivided market value of the assets of the pension plan to that segment, as follows:

(i) If the necessary data are readily determinable, the funding agency balance to be allocated to the segment shall be the amount contributed by, or on behalf of, the segment, increased by income received on such assets, and decreased by benefits and expenses paid

from such assets. Likewise, the accumulated value of permitted unfunded accruals to be allocated to the segment shall be the amount of permitted unfunded accruals assigned to the segment, increased by interest imputed to such assets, and decreased by benefits paid from sources other than the funding agency; or

(ii) If the data specified in paragraph (c)(5)(i) of this subsection are not readily determinable for certain prior periods, the market value of the assets of the pension plan shall be allocated to the segment as of the earliest date such data are available. Such allocation shall be based on the ratio of the actuarial accrued liability of the segment to the plan as a whole, determined in a manner consistent with the immediate gain actuarial cost method or methods used to compute pension cost. Such assets shall be brought forward as described in paragraph (c)(7) of this subsection.

(iii) The actuarial value of the assets of the pension plan shall be allocated to the segment in the same proportion as the market value of the assets.

(6) If, prior to the time a contractor is required to use this Standard, it has been calculating pension cost separately for individual segments, the amount of assets previously allocated to those segments need not be changed.

(7) After the initial allocation of assets, the contractor shall maintain a record of the portion of subsequent contributions, permitted unfunded accruals, income, benefit payments, and expenses attributable to the segment and paid from the assets of the pension plan: Income and expenses shall include a portion of any investment gains and losses attributable to the assets of the pension plan. Income and expenses of the pension plan assets shall be allocated to the segment in the same proportion that the average value of assets allocated to the segment bears to the average value of total pension plan assets for the period for which income and expenses are being allocated.

(8) If plan participants transfer among segments, contractors need not transfer assets or actuarial accrued liabilities unless a transfer is sufficiently large to distort the segment's ratio of pension plan assets to actuarial accrued liabilities determined using the accrued benefit cost method. If assets and liabilities are transferred, the amount of assets transferred shall be equal to the actuarial accrued liabilities, determined using the accrued benefit cost method, transferred.

(9) Contractors who separately calculate the pension cost of one or more segments may calculate such cost either for all pension plan participants assignable to the segment(s) or for only the active participants of the segment(s). If costs are calculated only for active participants, a separate segment shall be created for all of the inactive participants of the pension plan and the cost thereof shall be calculated. When a contractor makes such an election, assets shall be allocated to the segment for inactive participants in accordance with paragraphs (c) (5), (6), and (7) of this subsection. When an employee of a segment becomes inactive, assets shall be transferred from that segment to the segment established to accumulate the assets and actuarial liabilities for the inactive plan participants. The amount of assets transferred shall be equal to the actuarial accrued liabilities, determined under the accrued benefit cost method, for these inactive plan participants. If inactive participants become active, assets and liabilities shall similarly be transferred to the segments to which the participants are assigned. Such transfers need be made only as of the last day of a cost accounting period. The total annual pension cost for a segment having active employees shall be the amount calculated for the segment plus an allocated portion of the pension cost calculated for the inactive participants. Such an allocation shall be on the same basis as that set forth in paragraph (c)(1) of this subsection.

(10) Where pension cost is separately calculated for one or more segments, the actuarial cost method used for a plan shall be the same for all segments. Unless a separate calculation of pension cost for a segment is made because of a condition set forth in paragraph (c)(2)(iii) of this subsection, the same actuarial assumptions may be used for all segments covered by a plan.

(11) If a pension plan has participants in the home office of a company, the home office shall be treated as a segment for purposes of allocating the cost of the pension plan. Pension cost allocated to a home office shall be a part of the costs to be allocated in accordance with the appropriate requirements of Cost Accounting Standard 9904.403.

(12) If a segment is closed, if there is a pension plan termination, or if there is a curtailment of benefits, the contractor shall determine the difference between the actuarial accrued liability for the segment and the market value of the assets allocated to the segment, irrespective of whether or not the pension plan is terminated. The difference between the market value of the assets and the actuarial accrued liability for the segment represents an adjustment of previously-determined pension costs.

(i) The determination of the actuarial accrued liability shall be made using the accrued benefit cost method. The actuarial assumptions employed shall be consistent with the current and prior long term assumptions used in the measurement of pension costs. If there is a pension plan termination, the actuarial accrued liability shall be measured as the amount paid to irrevocably settle all benefit obligations or paid to the Pension Benefit Guarantee Corporation.

(ii) In computing the market value of assets for the segment, if the contractor has not already allocated assets to the segment, such an allocation shall be made in accordance with the requirements of paragraphs (c)(5) (i) and (ii) of this subsection. The market value of the assets shall be reduced by the accumulated value of prepayment credits, if any. Conversely, the market value of the assets shall be increased by the current value of any unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2).

(iii) The calculation of the difference between the market value of the assets and the actuarial accrued liability shall be made as of the date of the event (e.g., contract termination, plan amendment, plant closure) that caused the closing of the segment, pension plan termination, or curtailment of benefits. If such a date is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

(iv) Pension plan improvements adopted within 60 months of the date of the event which increase the actuarial accrued liability shall be recognized on a prorata basis using the number of months the date of adoption preceded the event date. Plan improvements mandated by law or collective bargaining agreement are not subject to this phase-in.

(v) If a segment is closed due to a sale or other transfer of ownership to a successor in interest in the contracts of the segment and all of the pension plan assets and actuarial accrued liabilities pertaining to the closed segment are transferred to the successor segment, then no adjustment amount pursuant to this paragraph (c)(12) is required. If only some of the pension plan assets and actuarial accrued liabilities of the closed segment are transferred, then the adjustment amount required under this paragraph (c)(12) shall be determined based on the pension plan assets and actuarial accrued liabilities remaining with the contractor. In either case, the effect of the transferred assets and liabilities is carried forward and recognized in the accounting for pension cost at the successor contractor.

(vi) The Government's share of the adjustment amount determined for a segment shall be the product of the adjustment amount and a fraction. The adjustment amount shall be reduced for any excise tax imposed upon assets withdrawn from the funding agency of a qualified pension plan. The numerator of such fraction shall be the sum of the pension plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the pension plan. The denominator of such fraction shall be the total pension costs assigned to cost accounting periods during those same years. This amount shall represent an adjustment of contract prices or cost allowance as appropriate. The adjustment may be recognized by modifying

a single contract, several but not all contracts, or all contracts, or by use of any other suitable technique.

(vii) The full amount of the Government's share of an adjustment is allocable, without limit, as a credit or charge during the cost accounting period in which the event occurred and contract prices/costs will be adjusted accordingly. However, if the contractor continues to perform Government contracts, the contracting parties may negotiate an amortization schedule, including interest adjustments. Any amortization agreement shall consider the magnitude of the adjustment credit or charge, and the size and nature of the continuing contracts.

[60 FR 16550, Mar. 30, 1995]

9904.413–60 Illustrations.

(a) *Assignment of actuarial gains and losses.* Contractor A has a defined-benefit pension plan whose costs are measured under an immediate-gain actuarial cost method. The contractor makes actuarial valuations every other year. In the past, at each valuation date, the contractor has calculated the actuarial gains and losses that have occurred since the previous valuation date and has merged such gains and losses with the unfunded actuarial liabilities that are being amortized. Pursuant to 9904.413–40(a), the contractor must make an actuarial valuation annually. Any actuarial gains or losses measured must be separately amortized over a 15-year period beginning with the period for which the actuarial valuation is made in accordance with 9904.413–50(a)(1) and (2).

(b)(1) *Valuation of the assets of a pension plan.* Contractor B has a qualified defined-benefit pension plan, the assets of which are invested in equity securities, debt securities, and real property. The contractor, whose cost accounting period is the calendar year, has an annual actuarial valuation of the pension plan assets in June of each year; the effective date of the valuation is the beginning of that year. The contractor's method for valuing the assets of the pension plan is as follows: debt securities expected to be held to maturity are valued on an amortized basis running from initial cost at purchase to par value at maturity; land and buildings are valued at cost less depreciation taken to date; all equity securities and debt securities not expected to be held to maturity are valued on the basis of a five-year moving average of market values. In making an actuarial valuation, the contractor must compare the values reached under the asset valuation method used with the market value of all the assets as required by 9904.413–40(b). In this case, the assets are valued as of January 1 of that year. The contractor established the following values as of the valuation date.

	Asset valuation method	Market
Cash	$100,000	100,000
Equity securities	6,000,000	7,800,000
Debt securities, expected to be held to maturity	550,000	600,000
Other debt securities	600,000	750,000
Land and Buildings, net of depreciation	400,000	750,000
Total	7,650,000	10,000,000

(2) Section 9904.413–50(b)(2) requires that the actuarial value of the assets of the pension plan fall within a corridor from 80 to 120 percent of market. The corridor for the plan's assets as of January 1 is from $12 million to $8 million. Because the asset value reached by the contractor, $7,650,000, falls outside that corridor, the value reached must be adjusted to equal the nearest boundary of the corridor: $8 million. In subsequent years the contractor must continue to use the same method for valuing assets in accordance with 9904.413–50(b)(3). If the value produced falls inside the corridor, such value shall be used in measuring pension costs.

(c) *Allocation of pension costs to segments.* (1) Contractor C has a defined-benefit pension plan covering employees at five segments. Pension cost is computed by use of an immediate-gain actuarial cost method. One segment (X) is devoted primarily to performing work for the Government. During the current cost accounting period, Segment X had a large and unforeseeable reduction of employees because of a contract termination at the convenience of the Government and because the contractor did not receive an anticipated follow-on contract to one that was completed during the period. The segment does continue to perform

work under several other Government contracts. As a consequence of this termination of employment gain, a separate calculation of the pension cost for Segment X would result in materially different allocation of costs to the segment than would a composite calculation and allocation by means of a base. Accordingly, pursuant to 9904.413–50(c)(2), the contractor must calculate a separate pension cost for Segment X. In doing so, the entire termination of employment gain must be assigned to Segment X and amortized over fifteen years. If the actuarial assumptions for Segment X continue to be substantially the same as for the other segments, the termination of employment gain may be separately amortized and allocated only to Segment X; all other Segment X computations may be included as part of the composite calculation. After the termination of employment gain is amortized, the contractor is no longer required to separately calculate the costs for Segment X unless subsequent events require each separate calculation.

(2) Contractor D has a defined-benefit pension plan covering employees at ten segments, all of which have some contracts subject to this Standard. The contractor's calculation of normal cost is based on a percentage of payroll for all employees covered by the plan. One of the segments (Segment Y) is entirely devoted to Government work. The contractor's policy is to place junior employees in this segment. The salary scale assumption for employees of the segment is so different from that of the other segments that the pension cost for Segment Y would be materially different if computed separately. Pursuant to 9904.413–50(c)(2)(iii), the contractor must compute the pension cost for Segment Y as if it were a separate pension plan. Therefore, the contractor must allocate a portion of the market value of pension plan's assets to Segment Y in accordance with 9904.413–50(c)(5). Memorandum records may be used in making the allocation. However, because the necessary records only exist for the last five years, 9904.413–50(c)(5)(ii) permits an initial allocation to be made as of the earliest date such records are available. The initial allocation must be made on the basis of the immediate gain actuarial cost method or methods used to calculate prior years' pension cost for the plan. Once the assets have been allocated, they shall be brought forward to the current period as described in 9904.413–50(c)(7). A portion of the undivided actuarial value of assets shall then be allocated to the segment based on the segment's proportion of the market value of assets in accordance with 9904.413–50(c)(5)(iii). In future cost accounting periods, the contractor shall make separate pension cost calculations for Segment Y based on the appropriate salary scale assumption. Because the factors comprising pension cost for the other nine segments are relatively equal, the contractor may compute pension cost for these nine segments by using composite factors. As required by 9904.413–50(c)(1), the base to be used for allocating such costs shall be representative of the factors on which the pension benefits are based.

(3) Contractor E has a defined-benefit pension plan which covers employees at twelve segments. The contractor uses composite actuarial assumptions to develop a pension cost for all segments. Three of these segments primarily perform Government work; the work at the other nine segments is primarily commercial. Employee turnover at the segments performing commercial work is relatively stable. However, employment experience at the Government segments has been very volatile; there have been large fluctuations in employment levels and the contractor assumes that this pattern of employment will continue to occur. It is evident that separate termination of employment assumptions for the Government segments and the commercial segments will result in materially different pension costs for the Government segments. Therefore, the cost for these segments must be separately calculated, using the appropriate termination of employment assumptions for these segments in accordance with 9904.413–50(c)(2)(iii).

(4) Contractor F has a defined-benefit pension plan covering employees at 25 segments. Twelve of these segments primarily perform Government work;

the remaining segments perform primarily commercial work. The contractor's records show that the termination of employment experience and projections for the twelve segments are so different from that of the average of all of the segments that separate pension cost calculations are required for these segments pursuant to 9904.413–50(c)(2). However, because the termination of employment experience and projections are about the same for all twelve segments, Contractor F may calculate a composite pension cost for the twelve segments and allocate the cost to these segments by use of an appropriate allocation base in accordance with 9904.413–50(c)(1).

(5) After this Standard becomes applicable to Contractor G, it acquires Contractor H and makes it Segment H. Prior to the merger, each contractor had its own defined-benefit pension plan. Under the terms of the merger, Contractor H's pension plan and plan assets were merged with those of Contractor G. The actuarial assumptions, current salary scale, and other plan characteristics are about the same for Segment H and Contractor G's other segments. However, based on the same benefits at the time of the merger, the plan of Contractor H had a disproportionately larger unfunded actuarial liability than did Contractor G's plan. Any combining of the assets and actuarial liabilities of both plans would result in materially different pension cost allocation to Contractor G's segments than if pension cost were computed for Segment H on the basis that it had a separate pension plan. Accordingly, pursuant to 9904.413–50(c)(3), Contractor G must allocate to Segment H a portion of the assets of the combined plan. The amount to be allocated shall be the market value of Segment H's pension plan assets at the date of the merger determined in accordance with 9904.413–50(c)(5), and shall be adjusted for subsequent receipts and expenditures applicable to the segment in accordance with 9904.413–50(c)(7). Pursuant to 9904.413–40(b)(1) and 9904.413–50(c)(5)(iii), Contractor G must use these amounts of assets as the basis for determining the actuarial value of assets used for calculating the annual pension cost applicable to Segment H.

(6) Contractor I has a defined-benefit pension plan covering employees at seven segments. The contractor has been making a composite pension cost calculation for all of the segments. However, the contractor determines that, pursuant to this Standard, separate pension costs must be calculated for one of the segments. In accordance with 9904.413–50(c)(9), the contractor elects to allocate pension plan assets only for the active participants of that segment. The contractor must then create a segment to accumulate the assets and actuarial accrued liabilities for the plan's inactive participants. When active participants of a segment become inactive, the contractor must transfer assets to the segment for inactive participants equal to the actuarial accrued liabilities for the participants that become inactive.

(7) Contractor J has a defined-benefit pension plan covering employees at ten segments. The contractor makes a composite pension cost calculation for all segments. The contractor's records show that the termination of employment experience for one segment, which is performing primarily Government work, has been significantly different from the average termination of employment experience of the other segments. Moreover, the contractor assumes that such different experience will continue. Because of this fact, and because the application of a different termination of employment assumption would result in significantly different costs being charged the Government, the contractor must develop separate pension cost for that segment. In accordance with 9904.413–50(c)(2)(iii), the amount of pension cost must be based on an acceptable termination of employment assumption for that segment; however, as provided in 9904.413–50(c)(10), all other assumptions for that segment may be the same as those for the remaining segments.

(8) Contractor K has a five-year contract to operate a Government-owned facility. The employees of that facility are covered by the contractor's overall qualified defined-benefit pension plan which covers salaried and hourly employees at other locations. At the conclusion of the five-year period, the Government decides not to renew the

contract. Although some employees are hired by the successor contractor, because Contractor K no longer operates the facility, it meets the 9904.413–30(a)(20)(iii) definition of a segment closing. Contractor K must compute the actuarial accrued liability for the pension plan for that facility using the accrued benefit cost method as of the date the contract expired in accordance with 9904.413–50(c)(12)(i). Because many of Contractor K's employees are terminated from the pension plan, the Internal Revenue Service considers it to be a partial plan termination, and thus requires that the terminated employees become fully vested in their accrued benefits to the extent such benefits are funded. Taking this mandated benefit improvement into consideration in accordance with 9904.413–50(c)(12)(iv), the actuary calculates the actuarial accrued liability to be $12.5 million. The contractor must then determine the market value of the pension plan assets allocable to the facility, in accordance with 9904.413–50(c)(5), as of the date agreed to by the contracting parties pursuant to 9904.413–50(c)(12)(iii), the date the contract expired. In making this determination, the contractor is able to do a full historical reconstruction of the market value of the assets allocated to the segment. In this case, the market value of the segment's assets amounted to $13.8 million. Thus, for this facility the value of pension plan assets exceeded the actuarial accrued liability by $1.3 million. Pursuant to 9904.413–50(c)(12)(vi), this amount indicates the extent to which the Government over-contributed to the pension plan for the segment and, accordingly, is the amount of the adjustment due to the Government.

(9) Contractor L operated a segment over the last five years during which 80% of its work was performed under Government CAS-covered contracts. The Government work was equally divided each year between fixed-price and cost-type contracts. The employees of the facility are covered by a funded nonqualified defined-benefit pension plan accounted for in accordance with 9904.412–50(c)(3). For each of the last five years the highest Federal corporate income tax rate has been 30%. Pension costs of $1 million per year were computed using a projected benefit cost method. Contractor L funded at the complement of the tax rate ($700,000 per year). The pension plan assets held by the funding agency earned 8% each year. At the end of the five-year period, the funding agency balance; i.e., the market value of invested assets, was $4.4 million. As of that date, the accumulated value of permitted unfunded accruals; i.e., the current value of the $300,000 not funded each year, is $1.9 million. As defined by 9904.413–30(a)(20)(i), a segment closing occurs when Contractor L sells the segment at the end of the fifth year. Thus, for this segment, the market value of the assets of the pension plan determined in accordance with 9904.413–30(a)(10) is $6.3 million, which is, the sum of the funding account balance ($4.4 million) and the accumulated value of permitted unfunded accruals ($1.9 million). Pursuant to 9904.413–50(c)(12)(i), the contractor uses the accrued benefit cost method to calculate an actuarial accrued liability of $5 million as of that date. There is no transfer of plan assets or liabilities to the buyer. The difference between the market value of the assets and the actuarial accrued liability for the segment is $1.3 million ($6.3 million—$5 million). Pursuant to 9904.413–50(c)(12)(vi), the adjustment due the Government for its 80% share of previously-determined pension costs for CAS-covered contracts is $1.04 million (80% times $1.3 million). Because contractor L has no other Government contracts the $1.04 million is a credit due to the Government.

(10) Assume the same facts as in 9904.413–60(c)(9), except that Contractor L continues to perform substantial Government contract work through other segments. After considering the amount of the adjustment and the current level of contracts, the contracting officer and the contractor establish an amortization schedule so that the $1.04 million is recognized as credits against ongoing contracts in five level annual installments, including an interest adjustment based on the interest assumption used to compute pension costs for the continuing contracts. This amortization schedule satisfies the requirements of 9904.413–50(c)(12))(vii).

(11) Assume the same facts as in 9904.413–60(c)(9). As part of the transfer of ownership, Contractor L also transfers all pension liabilities and assets of the segment to the buyer. Pursuant to 9904.413–50(c)(12)(v), the segment closing adjustment amount for the current period is transferred to the buyer and is subsumed in the future pension cost accounting of the buyer. If the transferred liabilities and assets of the segment are merged into the buyer's pension plan which has a different ratio of market value of pension plan assets to actuarial accrued liabilities, then pension costs must be separately computed in accordance with 9904.413–50(c)(3).

(12) Contractor M sells its only government segment. Through a contract novation, the buyer assumes responsibility for performance of the segment's government contracts. Just prior to the sale, the actuarial accrued liability under the actuarial cost method in use is $18 million and the market value of assets allocated to the segment of $22 million. In accordance with the sales agreement, Contractor M is required to transfer $20 million of assets to the new plan. In determining the segment closing adjustment under 9904.413–50(c)(12) the actuarial accrued liability and the market value of assets are reduced by the amounts transferred to the buyer by the sale. The adjustment amount, which is the difference between the remaining assets ($2 million) and the remaining actuarial liability ($0), is $2 million.

(13) Contractor N has three segments that perform primarily government work and has been separately calculating pension costs for each segment. As part of a corporate reorganization, the contractor closes the production facility for Segment A and transfers all of that segment's contracts and employees to Segments B and C, the two remaining government segments. The pension assets from Segment A are allocated to the remaining segments based on the actuarial accrued liability of the transferred employees. Because Segment A has discontinued operations, a segment closing has occurred pursuant to 9904.413–30(a)(20)(ii). However, because all pension assets and liabilities have been transferred to other segments or to successors in interest of the contracts of Segment A, an immediate period adjustment is not required pursuant to 9904.413–50(c)(12)(v).

(14) Contractor O does not renew its government contract and decides to not seek additional government contracts for the affected segment. The contractor reduces the work force of the segment that had been dedicated to the government contract and converts the segment's operations to purely commercial work. In accordance with 9904.413–30(a)(20)(iii), the segment has closed. Immediately prior to the end of the contract the market value of the segment's assets was $20 million and the actuarial accrued liability determined under the actuarial cost method in use was $22 million. An actuarial accrued liability of $16 million is determined using the accrued benefit cost method as required by 9904.413–50(c)(12)(i). The segment closing adjustment is $4 million ($20 million—$16 million).

(15) Contractor P terminated its underfunded defined-benefit pension plan for hourly employees. The market value of the assets for the pension plan is $100 million. Although the actuarial accrued liability exceeds the $100 million of assets, the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is only $85 million. Therefore, the $15 million of assets in excess of the liability for guaranteed benefits are allocated to plan participants in accordance with PBGC regulations. The PBGC does not impose an assessment for unfunded guaranteed benefits against the contractor. The adjustment amount determined under 9904.413–50(c)(12) is zero.

(16) Assume the same facts as 9904.413–60(c)(15), except that the termination liability for benefits guaranteed by the Pension Benefit Guarantee Corporation (PBGC) is $120 million. The PBGC imposes a $20 million ($120 million—$100 Million) assessment against Contractor P for the unfunded guaranteed benefits. The contractor then determines the Government's share of the pension plan termination adjustment charge of $20 million in accordance with 9904.413–50(c)(12)(vi). In accordance with 9904.413–50(c)(12)(vii), the

cognizant Federal official may negotiate an amortization schedule based on the contractor's schedule of payments to the PBGC.

(17) Assume the same facts as in 9904.413–60(c)(16), except that pursuant to 9904.412–50(a)(2) Contractor P has an unassignable portion of unfunded actuarial liability for prior unfunded pension costs which equals $8 million. The $8 million represents the value of assets that would have been available had all assignable costs been funded and, therefore, must be added to the assets used to determine the pension plan termination adjustment in accordance with 9904.413–50(c)(12)(ii). In this case, the adjustment charge is determined to be $12 million ($20 million − $8 million).

(18) Contractor Q terminates its qualified defined-benefit pension plan without establishing a replacement plan. At termination, the market value of assets are $85 million. All obligations for benefits are irrevocably transferred to an insurance company by the purchase of annuity contracts at a cost of $55 million, which thereby determines the actuarial liability in accordance with 9904.413–50(c)(12)(i). The contractor receives a reversion of $30 million ($85 million − $55 million). The adjustment is equal to the reversion amount, which is the excess of the market value of assets over the actuarial liability. However, ERISA imposes a 50% excise tax of $15 million (50% of $30 million) on the reversion amount. In accordance with 9904.413–50(c)(12)(vi), the $30 million adjustment amount is reduced by the $15 million excise tax. Pursuant to 9904.413–50(c)(12)(vi), a share of the $15 million net adjustment ($30 million—$15 million) shall be allocated, without limitation, as a credit to CAS-covered contracts.

(19) Assume that, in addition to the facts of 9904.413–60(c)(18), Contractor Q has an accumulated value of prepayment credits of $10 million. Contractor Q has $3 million of unfunded actuarial liability separately identified and maintained pursuant to 9904.412–50(a)(2). The assets used to determine the adjustment amount equal $78 million. This amount is determined as the market value of assets ($85 million) minus the accumulated value of prepayment credits ($10 million) plus the portion of unfunded actuarial liability maintained pursuant to 9904.412–50(a)(2) ($3 million). Therefore, the difference between the assets and the actuarial liability is $23 million ($78 million − $55 million). In accordance with 9904.413–50(c)(12)(vi), the $23 million adjustment is reduced by the $15 million excise tax to equal $8 million. The contracting officer determines that the pension cost data of the most recent eight years reasonably reflects the government's participation in the pension plan. The sum of costs allocated to fixed-price and cost-type contracts subject to this Standard over the eight-year period is $21 million. The sum of costs assigned to cost accounting periods during the last eight years equals $42 million. Therefore, the government's share of the net adjustment is 50% ($21 million divided by $42 million) of the $8 million and equals $4 million.

(20) Contractor R maintains a qualified defined-benefit pension plan. Contractor R amends the pension plan to eliminate the earning of any future benefits; however the participants do continue to earn vesting service. Pursuant to 9904.413–30(a)(7), a curtailment of benefits has occurred. An actuarial accrued liability of $78 million is determined under the accrued benefit cost method using the interest assumption used for the last four actuarial valuations. The market value of assets, determined in accordance with 9904.413–50(c)(12)(ii), is $90 million. Contractor R shall determine the Government's share of the adjustment in accordance with 9904.413–50(c)(12)(vi). The contractor then shall allocate that share of the $12 million adjustment ($90 million − $78 million) determined under 9904.413–50(c)(12) to CAS-covered contracts. The full amount of adjustment shall be made without limitation in the current cost accounting period unless arrangements to amortize the adjustment are permitted and negotiated pursuant to 9904.413–50(c)(12)(vii).

(21) Contractor S amends its qualified defined-benefit pension plan to ''freeze'' all accrued benefits at their current level. Although not required by law, the amendment also provides that all accrued benefits are fully vested.

Contractor S must determine the adjustment for the curtailment of benefits. Fifteen months prior to the date of the plan amendment freezing benefits, Contractor S voluntarily amended the plan to increase benefits. This voluntary amendment resulted in an overall increase of over 10%. All actuarial accrued liabilities are computed using the accrued benefit cost method. The actuarial accrued liability for all accrued benefits is $1.8 million. The actuarial accrued liability for vested benefits immediately prior to the current plan amendment is $1.6 million. The actuarial accrued liability determined for vested benefits based on the plan provisions before the voluntary amendment is $1.4 million. The $1.4 million actuarial liability is based on benefit provisions that have been in effect for six years and is fully recognized. However, the $200,000 increase in liability due to the voluntary benefit improvement adopted 15 months ago must be phased-in on a prorata basis over 60 months. Therefore, only 25% (15 months divided by 60 months) of the $200,000 increase, or $50,000, can be included in the curtailment liability. The current amendment voluntarily increasing vesting was just adopted and, therefore, none of the associated increase in actuarial accrued liability can be included. Accordingly, in accordance with 9904.413–50(c)(12)(iv), Contractor S determines the adjustment for the curtailment of benefits using an actuarial accrued liability of $1.45 million ($1.4 million plus $50,000).

(22) Contractor T has maintained separate qualified defined-benefit plans for Segments A and B and has separately computed pension costs for each segment. Both segments perform work under contracts subject to this Standard. On the first day of the current cost accounting period, Contractor T merges the two pension plans so that segments A and B are now covered by a single pension plan. Because the ratio of assets to liabilities for each plan is materially different from that of the merged plan, the contractor continues the separate computation of pension costs for each segment pursuant to 9904.413–50(c)(3). After considering the assignable cost limitations for each segment, Contractor T determines the potentially assignable pension cost is $12,000 for Segment A and $24,000 for Segment B. The maximum tax-deductible amount for the merged plan is $30,000, which is $6,000 less than the sum of the otherwise assignable costs for the segments ($36,000). To determine the portion of the total maximum tax-deductible amount applicable to each segment on a reasonable basis, the contractor prorates the $30,000 by the pension cost determined for each segment after considering the assignable cost limitations for each segment. Therefore, in accordance with 9904.413–50(c)(1)(i), the assignable pension cost is $10,000 for Segment A ($30,000 times $12,000 divided by $36,000) and $20,000 for Segment B ($30,000 times $24,000 divided by $36,000). Contractor T funds the full $30,000 and allocates the assignable pension cost for each segment to final cost objectives.

(23) Assume the same facts as in 9904.413–60(c)(22), except that the tax-deductible maximum is $40,000 and the ERISA minimum funding requirement is $18,000. Since funding of the accrued pension cost is not constrained by tax-deductibility, Contractor T determines the assignable pension cost to be $12,000 for Segment A and $24,000 for Segment B. If the contractor funds $36,000, the full assigned pension cost of each segment can be allocated to final cost objectives. However, because the contractor funds only the ERISA minimum of $18,000, the contractor must apportion the $18,000 contribution to each segment on a basis that reflects the assignable pension cost of each segment in accordance with 9904.413–50(c)(1)(ii). To measure the funding level of each segment, Contractor T uses an ERISA minimum funding requirement separately determined for each segment, as if the segment were a separate plan. On this basis, the allocable pension cost is determined to be $8,000 for Segment A and $10,000 for Segment B. In accordance with 9904.412–50(a)(2), Contractor T must separately identify, and eliminate from future cost computations, $4,000 ($12,000 − $8,000) for Segment A and $14,000 ($24,000 − $10,000) for Segment B.

(24) Assume the same facts as in 9904.413–60(c)(23), except that Segment B performs only commercial work. As

permitted by 9904.413–50(c)(1)(ii), the contractor first applies $12,000 of the contribution amount to Segment A, which is performing work under Government contracts, for purposes of 9904.412–50(d)(1). The remaining $6,000 is applied to Segment B. The full assigned pension cost of $12,000 for Segment A is funded and such amount is allocable to CAS-covered contracts. Pursuant to 9904.412–50(a)(2), the contractor separately identifies, and eliminates from future pension costs, the $18,000 ($24,000 − $6,000) of unfunded assigned cost for Segment B.

(25) Contractor U has a qualified defined-benefit pension plan covering employees at two segments that perform work on contracts subject to this Standard. The ratio of the actuarial value of assets to actuarial accrued liabilities is significantly different between the two segments. Therefore, Contractor U is required to compute pension cost separately for each segment. The actuarial value of assets allocated to Segment A exceeds the actuarial accrued liability by $50,000. Segment B has an unfunded actuarial liability of $20,000. Thus, the pension plan as a whole has an actuarial surplus of $30,000. Pension cost of $5,000 is computed for Segment B and is less than Segment B's assignable cost limitation of $9,000. The tax-deductible maximum is $0 for the plan as whole and, therefore, $0 for each segment. Contractor U will deem all existing amortization bases maintained for Segment A to be fully amortized in accordance with 9904.412–50(c)(2)(ii). For Segment B, the amortization of existing portions of unfunded actuarial liability continues unabated. Furthermore, pursuant to 9904.412–50(c)(2)(iii), the contractor establishes an additional amortization base for Segment B for the assignable cost deficit of $5,000.

[60 FR 16553, Mar. 30, 1995; 60 FR 20248, Apr. 25, 1995, as amended at 61 FR 58011, Nov. 12, 1996]

9904.413–61 Interpretation. [Reserved]

9904.413–62 Exemption.

None for this Standard.

9904.413–63 Effective date.

(a) This Standard is effective as of March 30, 1995.

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.413 in effect prior to March 30, 1995, until this Standard, effective March 30, 1995, becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

[60 FR 16557, Mar. 30, 1995]

9904.413–64 Transition method.

(a) To be acceptable, any method of transition from compliance with Standard 9904.413 in effect prior to March 30, 1995, to compliance with Standard 9904.413 in effect as of March 30, 1995, must follow the equitable principle that costs, which have been previously provided for, shall not be redundantly provided for under revised methods. Conversely, costs that have not previously been provided for must be provided for under the revised method. This transition subsection is not intended to qualify for purposes of assignment or allocation, pension costs which have previously been disallowed for reasons other than ERISA funding limitations.

(b) The sum of all portions of unfunded actuarial liability identified pursuant to Standard 9904.413, effective March 30, 1995, including such portions of unfunded actuarial liability determined for transition purposes, is subject to the requirements for assignment of 9904.412–40(c).

(c) Furthermore, this Standard, effective March 30, 1995, clarifies, but is not intended to create, rights of the contracting parties, and specifies techniques for determining adjustments pursuant to 9904.413–50(c)(12). These rights and techniques should be used to resolve outstanding issues that will affect pension costs of contracts subject to this Standard.

(d) The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of this Standard and shall be approved by the contracting officer.

(e) All adjustments shall be prospective only. However, costs/prices of prior and existing contracts not subject to price adjustment may be considered in determining the appropriate transition method or adjustment amount for the computation of costs/prices of contracts subject to this Standard.

[60 FR 16557, Mar. 30, 1995]

9904.414 Cost accounting standard—cost of money as an element of the cost of facilities capital.

9904.414–10 [Reserved]

9904.414–20 Purpose.

The purpose of this Cost Accounting Standard is to establish criteria for the measurement and allocation of the cost of capital committed to facilities as an element of contract cost. Consistent application of these criteria will improve cost measurement by providing for allocation of cost of contractor investment in facilities capital to negotiated contracts.

9904.414–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Business Unit* means any segment of an organization, or an entire business organization, which is not divided into segments.

(2) *Cost of capital committed to facilities* means an imputed cost determined by applying a cost of money rate to facilities capital.

(3) *Facilities capital* means the net book value of tangible capital assets and of those intangible capital assets that are subject to amortization.

(4) *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.

(5) *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.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.414–40 Fundamental requirement.

(a) A contractor's facilities capital shall be measured and allocated in accordance with the criteria set forth in this Standard. The allocated amount shall be used as a base to which a cost of money rate is applied.

(b) The cost of money rate shall be based on rates determined by the Secretary of the Treasury, pursuant to Public Law 92–41 (85 stat. 97).

(c) The cost of capital committed to facilities shall be separately computed for each contract using facilities capital cost of money factors computed for each cost accounting period.

9904.414–50 Techniques for application.

(a) The investment base used in computing the cost of money for facilities capital shall be computed from accounting data used for contract cost purposes. The form and instructions stipulated in this Standard shall be used to make the computation.

(b) The cost of money rate for any cost accounting period shall be the arithmetic mean of the interest rates specified by the Secretary of the Treasury pursuant to Public Law 92–41 (85 stat. 97). Where the cost of money must be determined on a prospective basis, the cost of money rate shall be based on the most recent available rate published by the Secretary of the Treasury.

(c)(1) A facilities capital cost of money factor shall be determined for each indirect cost pool to which a significant amount of facilities capital has been allocated and which is used to allocate indirect costs to final cost objectives.

(2) The facilities capital cost of money factor for an indirect cost pool shall be determined in accordance with Form CASB CMF, and its instructions which are set forth in appendix A to 9904.414. One form will serve for all the indirect cost pools of a business unit.

(3) For each CAS-covered contract, the applicable cost of capital committed to facilities for a given cost accounting period is the sum of the products obtained by multiplying the amount of allocation base units (such as direct labor hours, or dollars of total cost input) identified with the contract for the cost accounting period by the facilities capital cost of money factor for the corresponding indirect cost pool. In the case of process cost accounting systems, the contracting parties may agree to substitute an appropriate statistical measure for the allocation base units identified with the contract.

9904.414–60 Illustrations.

The use of Form CASB CMF and other computations anticipated for this Cost Accounting Standard are illustrated in appendix B to 9904.414.

9904.414–61 Interpretation. [Reserved]

9904.414–62 Exemption.

(a) For contractors who are not subject to full CAS-coverage as of the date of publication of this part 99 as a final rule, this Standard shall apply only to those fully-covered contracts with subsequent dates of award and pricing certification.

(b) This Standard shall not apply where compensation for the use of tangible capital assets is based on use rates or allowances provided for by other appropriate Federal procurement regulations such as those governing:

(1) Educational institutions,

(2) State, local, and federally recognized Indian tribal governments, or

(3) Construction equipment rates (see 48 CFR 31.105(d)).

9904.414–63 Effective date.

This Standard is effective as of April 17, 1992.

APPENDIX A TO 9904.414—INSTRUCTIONS FOR FORM CASB CMF

FORM APPROVED OMB NUMBER
0348–0051

Form CASB-CMF

APPENDIX A
FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION

CONTRACTOR: ADDRESS:

BUSINESS UNIT:

COST ACCOUNTING PERIOD:

		1. APPLICABLE COST OF MONEY RATE ____%	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED			BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1 x 4	IN UNIT(S) OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP							
	TOTAL							
	UNDISTRIBUTED							
	DISTRIBUTED							
OVERHEAD POOLS								
G & A EXPENSE POOLS								
TOTAL							//////////////	//////////////

Purpose

The purpose of this form is to (a) accumulate total facilities capital net book values allocated to each business unit for the contractor cost accounting period, and (b) convert those values to facilities capital cost of money factors applicable to each overhead or G&A expense allocation base employed within a business unit.

Basis

All data pertain to the cost accounting period for which the contractor prepares overhead and G&A expense allocations. The cost of money computations should be compatible with those allocation procedures. More specifically, facilities capital values used should be the same values that are used to generate depreciation or amortization that is allowed for Federal Government contract costing

purposes; land which is integral to the regular operation of the business unit shall be included.

Applicable Cost of Money Rate (Col. 1)

Enter here the rate as computed in accordance with 9904.414–50(b).

Accumulation and Direct Distribution of Net Book Value (Col. 2)

Recorded, Leased Property, Corporate.

The net book value of facilities capital items in this column shall represent the average balances outstanding during the cost accounting period. This applies both to items that are subject to periodic depreciation or amortization and also to such items as land that are not subject to periodic write-offs. Unless there is a major fluctuation, it will be adequate to ascertain the net book value of these assets at the beginning and end of each cost accounting period, and to compute an average of those two sets of figures. ''Recorded'' facilities are the facilities capital items owned by the contractor, carried on the books of the business unit, and used in its regular business activity. ''Leased property'' is the capitalized value of leases for which constructive costs of ownership are allowed in lieu of rental costs under Government procurement regulations. Corporate or group facilities are the business unit's allocable share of corporate-owned and leased facilities. The net book value of items of facilities capital which are held or controlled by the home office shall be allocated to the business unit on a basis consistent with the home office expense allocation.

Distributed and Undistributed.

All facilities capital items that are identified in the contractor's records as solely applicable to an organizational unit corresponding to a specific overhead, G&A or other indirect cost pool which is used to allocate indirect costs to final cost objectives, are listed against the applicable pools and are classified as ''distributed.'' ''Undistributed'' is the remainder of the business unit's facilities capital. The sum of ''distributed'' and ''undistributed'' must also correspond to the amount shown on the ''total'' line.

Allocation of Distributed.

List in the narrative column all the overhead and G&A expense pools to which ''distributed'' facilities capital items have been allocated. Enter the corresponding amounts in (Col. 2). The sum of all the amounts shown against specific overhead and G&A expense pools must correspond to the amount shown in the ''distributed'' line.

Allocation of Undistributed (Col. 3)

Business unit ''undistributed'' facilities are allocated to overhead and the G&A expense pools on any reasonable basis that approximates the actual absorption of depreciation or amortization of such facilities. For instance, the basis of allocation of undistributed assets in each business unit between; e.g., engineering overhead pool and the manufacturing overhead pool, should be related to the manner in which the expenses generated by these assets are allocated between the two overhead pools. Detailed analysis of this allocation is not required where essentially the same results can be obtained by other means. Where the cost accounting system for purposes of Government contract costing uses more than one ''charging rate'' for allocating indirect costs accumulated in a single cost pool, one representative base may be substituted for the multiplicity of bases used in the allocation process. The net book value of service center facilities capital items appropriately allocated should be included in this column. The sum of the entries in Column 3 is equal to the entry in the undistributed line, Column 2.

A supporting work sheet of this allocation should be prepared if there is more than one service center or other similar ''intermediate'' cost objective involved in the reallocation process.

Alternative Allocation Process—As an alternative to the above allocation process all the undistributed assets for one or more service centers or similar intermediate cost objectives may be allocated to the G&A expense pool. Consequently, the cost of money for these undistributed assets will be distributed to the final cost objectives on the same basis that is used to allocate G&A expense. This procedure may be adopted for any cost accounting period only when the contracting parties agree (a) that the depreciation or amortization generated by these undistributed assets is immaterial, or (b) that the results of this alternative procedure are not likely to differ materially from those which would be obtained under the ''regular'' allocation process described previously.

Total Net Book Value (Col. 4)

The sum of Columns 2 and 3. The total of this column should agree with the business unit's total shown in Column 2.

Cost of Money for the Cost Accounting Period (Col. 5)

Multiply the amounts in Column 4 by the percentage rate in Column 1.

Allocation Base for the Period (Col. 6)

Show here the total units of measure used to allocate overhead and G&A expense pools (e.g., direct labor dollars, machine hours,

total cost input, etc.). Include service centers that make charges to final cost objectives. Each base unit-of-measure must be compatible with the bases used for applying overhead in the Federal Government contract cost computation. The total base unit of measure used for allocation in this column refers to all work done in an organizational unit associated with the indirect cost pool and not to Government work alone.

Facilities Capital Cost of Money Factors (Col. 7)

The quotients of cost of money for the cost accounting period (Col. 5) separately divided by the corresponding overhead or G&A expense allocation bases (Col. 6). Carry each computation to five decimal places. This factor represents the cost of money applicable to facilities capital allocated to each unit of measure of the overhead or G&A expense allocation base.

APPENDIX B TO 9904.414—EXAMPLE—ABC CORPORATION

ABC Corporation has a home office that controls three operating divisions (Business Units A, B & C). The home office includes an administrative computer center whose costs are allocated separately to the business units. The separate allocation conforms to the requirements specified in the Cost Accounting Standard No. 403. Tables I through VI deal with home office expense allocations to business units.

The A Division is a business unit as defined by the CASB, and it uses one engineering and one manufacturing overhead pool to accumulate costs for charging overhead to final cost objectives. In addition, the indirect cost allocation process also uses two ''service centers'' with their own indirect cost pools: Occupancy and technical computer center.

The costs accumulated in the occupancy pool are allocated among manufacturing overhead, engineering overhead, and the technical computer center on the basis of floor space occupied. The costs accumulated in the technical computer center cost pool are allocated to users on the basis of a CPU hourly rate. Some of these allocations are made to engineering or manufacturing overhead while others are allocated direct to final cost objectives.

At the business unit level, all the indirect expense incurred is regarded either as an engineering or manufacturing expense. Thus the sole item that enters into the business unit G&A expense pool is the allocation received by the A Division from the home office.

Operating results for the A Division are given in Table VII. Facilities capital items for the division are given in Table IX.

The example is based on a single set of illustrative contract cost data given in Table VIII. Since two methods, the ''regular'' and the ''alternative'' method, are potentially available for computing cost of money on facilities capital items two sets of different results can be considered.

In addition, total cost input is used in the example as the allocation base for the G&A expense. Two variations of this example have been prepared to illustrate the impact of excluding or including cost of money from total cost input. Variation I, summarized in Table XIII, excludes cost of money from the cost input allocation base. Variation II, summarized in Tables XVII and XVIII, includes cost of money in the cost input allocation base.

Throughout the example, where appropriate, cross references have been made to the text of the relevant parts of the Standard.

VARIATION I—TOTAL COST INPUT ALLOCATION BASE EXCLUDES COST OF MONEY

TABLE I—NET BOOK VALUE OF HOME OFFICE FACILITIES CAPITAL

	Dec. 31, 1974	Dec. 31, 1975
Administrative computer center facilities capital	$550,000	$450,000
Other home office facilities capital	420,000	380,000
Total	970,000	830,000

The assets in the above table generate allowable depreciation or amortization, as explained in Instructions for Form CASB CMF (Basis). Thus they should be included in the asset base for cost of money computation.

TABLE II—HOME OFFICE FACILITIES CAPITAL ANNUAL AVERAGE BALANCES

Administrative computer center facilities capital	$500,000
Other home office facilities capital	400,000
Total	900,000

The above averages are based on data in Table I computed in accordance with the criteria in Instructions for Form CASB CMF (Recorded, Leased Property, Corporate).

$970,000+$830,000=$1,800,000¹2=$900,000

TABLE III—HOME OFFICE DEPRECIATION AND AMORTIZATION FOR 1975

Administrative computer center facilities capital	$100,000
Other home office facilities capital	40,000
Total	140,000

TABLE IV—ALLOCATION OF ABC HOME OFFICE EXPENSES TO DIVISIONS (BUSINESS UNITS)

	Total expense	Allocation of business units		
		A	B	C
Administrative computer center	$1,800,000	$900,000	$900,000	
Other home office	4,800,000	2,400,000	1,200,000	1,200,000
Total	6,600,000	3,300,000	2,100,000	1,200,000

The above allocation is carried out in accordance with CAS 403. The expense allocated to individual business units above includes depreciation and amortization as reflected in Table V.

TABLE V—DEPRECIATION AND AMORTIZATION COMPONENT OF ABC HOME OFFICE EXPENSE

	Total depreciation and amortization expense	Allocation of business units		
		A	B	C
Administrative computer center	$100,000	$50,000	$50,000	
Other home office	40,000	20,000	10,000	10,000
Total	140,000	70,000	60,000	10,000

TABLE VI—ALLOCATION OF HOME OFFICE FACILITIES CAPITAL TO BUSINESS UNITS

(a) Depreciation and amortization allocation in Table V converted to percentages.

	Total depreciation and amoritzation expense (in percent)	Allocation of business units (in percent)		
		A	B	C
Administrative computer center	100	50	50	
Other home office	100	50	25	25

(b) Application of percentages in (a) to average net book values in Table II, in accordance with criteria in Instructions for Form CASB CMF (Recorded, Leased Property, Corporate).

	Total net book value	Allocation of business units		
		A	B	C
Administrative computer center facilities capital	$500,000	$250,000	$250,000	
Other home office facilities capital	400,000	200,000	100,000	$100,000
Total	900,000	450,000	350,000	100,000

TABLE VII—"A" DIVISION 1975 OPERATING RESULTS

	Total cost input and other work G.&A.	Fixed-price CAS-covered contract	Cost reimbursement CAS-covered contracts	Commercial and other work
Direct material:				
Purchased parts	$2,000,000	$100,000	$100,000	$1,800,000
Subcontract items	21,530,000	11,750,000	7,205,000	2,575,000
Total	23,530,000	11,850,000	7,305,000	4,375,000
Director labor and overhead:				
Engineering labor	2,000,000	1,500,000	500,000	
Engineering overhead (80 pct of direct engineering labor)	1,600,000	1,200,000	400,000	
Manufacturing labor	3,000,000	1,200,000	200,000	1,600,000

TABLE VII—"A" DIVISION 1975 OPERATING RESULTS—Continued

	Total cost input and other work G.&A.	Fixed-price CAS-covered contract	Cost reimbursement CAS-covered contracts	Commercial and other work
Manufacturing overhead (200 pct of direct management labor)	6,000,000	2,400,000	400,000	3,200,000
Other direct charges:				
Technical computer center direct charge 2,280 h at $250/h	570,000	200,000	370,000	
Total cost input (excluding cost of money)	36,700,000	18,350,000	9,175,000	9,175,000
G. & A. (8.99 pct of cost input)	3,300,000	1,650,000	825,000	825,000
Total	40,000,000	20,000,000	10,000,000	10,000,000

TABLE VIII—COST DATA FOR THE CONTRACT

Purchased parts	$85,000
Subcontract items	990,000
Technical computer time 280 h at $250/h	70,000
Engineering labor	330,000
Engineering overhead at 80 pct	264,000
Manufacturing labor	1,210,000
Manufacturing overhead at 200 pct	2,420,000
Total cost input (excluding cost of money)	5,369,000
G & A. at 8.99 pct	483,000
Total cost input and G. & A. (excluding cost of money)	5,852,000

TABLE IX—DIVISION A FACILITIES CAPITAL

Average net book values are computed in accordance with Instructions to Form CASB CMF. Average figures only are given, the underlying beginning and ending balances for 1975 have not been reproduced.

Name of indirect cost pool the asset is associated with	Average net book value	Annual depreciation
Engineering overhead	$320,000	$40,000
Manufacturing overhead	4,500,000	900,000
Technical computer center	450,000	90,000
Occupancy	3,000,000	200,000
Facilities capital recorded by division A (see Form CASB CMF instructions for description of recorded)	8,270,000	1,230,000
Allocated from home office, table VI	450,000	
Total division A	8,720,000	

TABLE X—ALLOCATION OF UNDISTRIBUTED FACILITIES CAPITAL

(a) *Occupancy Pool Assets.* Total occupancy pool expenses are assumed to be $1,000,000 of which $200,000 is depreciation per Table IX. Allocation of the $3,000,000 net book value of assets per Table IX is performed on the basis of floor space utilization.

Indirect cost pool	Occupancy expense and depreciation allocation	Percent of total floor space utilized	Asset allocation
Engineering	$200,000	20	$600,000
Manufacturing	750,000	75	2,250,000

Indirect cost pool	Occupancy expense and depreciation allocation	Percent of total floor space utilized	Asset allocation
Technical computer	50,000	5	150,000
Total	1,000,000	100	3,000,000

(b) Technical Computer Center Assets. Total technical computer center expenses for the year are assumed to be $770,000 including $90,000 depreciation per Table IX and $50,000 charge from the occupancy pool per paragraph (a) of this table. A charging rate of $250 per hour is computed assuming a total of 3,080 chargeable CPU hours per annum. The net book value of assets amounting to $600,000 ($450,000 per Table IX plus the $150,000 allocated per (a) above) is allocated on the basis of CPU hours utilized.

Overhead pool or cost objective	Hours charged	Amount charged	Percent	Asset allocation
Fixed price contracts, table VII	800	$200,000	26	$156,000
Cost reimbursement contracts, table VII	1,480	370,000	48	288,000
Engineering overhead pool	800	200,000	26	156,000
Total	3,080	770,000	100	600,000

(c) Summary of Undistributed Facilities Capital Allocation. Undistributed (per Table IX).

Technical computer center	$450,000
Occupancy	3,000,000
Total	3,450,000

Distribution per paragraph (a) or (b) of this table of balances to overhead pools that result in charges direct to final cost objectives.

Overhead pool	(a)	(b)	Total
Engineering	$600,000	$156,000	$756,000
Manufacturing	2,250,000	.....	2,250,000
Technical computer center (direct charge to contracts)	.....	444,000	444,000
Total	2,850,000	600,000	3,450,000

Form CASB-CMF

TABLE XI

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Regular" Method - Cost of Money Excluded from Total Cost Input)

CONTRACTOR: ABC Corp. ADDRESS:

BUSINESS UNIT: A Division

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE 8 %	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED	Table IX	8,270,000	BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1 x 4	IN UNIT(S) OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP	Table VI	450,000	Worksheet Table X			TableVII	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering	Table IX	320,000	756,000	1,076,000	86,080	$ 2,000,000	.04304
	Manufacturing	Table IX	4,500,000	2,250,000	6,750,000	540,000	$ 3,000,000	.18
	Technical Computer			444,000	444,000	35,520	2,280 hr	15.57895
G & A EXPENSE POOLS	G&A Expense	Table VI	450,000		450,000	36,000	$36,700,000	.00098
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////////	//////////////

Form CASB-CMF

TABLE XII

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Alternative" Method - Cost of Money Excluded from Total Cost Input)

CONTRACTOR: ABC Corp.

ADDRESS:

BUSINESS UNIT: A Division

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE 8 %	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED	Table IX	8,270,000	BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1 x 4	IN UNIT(S) OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP	Table VI	450,000	All to G&A Expense Pool			Table VII	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering	Table IX	320,000		320,000	25,600	$ 2,000,000	.0128
	Manufacturing	Table IX	4,500,000		4,500,000	360,000	$ 3,000,000	.12
G & A EXPENSE POOLS	G&A Expense	Table VI	450,000	3,450,000	3,900,000	312,000	$36,700,000	.00850
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////////	//////////////

TABLE XIII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL

[Cost of money excluded from total cost input]

Allocation base	Allocated to contract, table VIII	Computation using regular facilities, capital cost of money factor, table XI	Amount	Computation using alternative facilities capital, cost of money factor, table XI	Amount
Engineering labor	$330,000	0.04304	$14,203	0.0128	$4,244
Manufacturing labor	1,210,000	.18	217,800	.12	145,200
Technical computer time	[1] 280	15.57895	4,362	.....	.....
Cost input	$5,369,000	.00098	5,261	.00850	45,636
Total cost of money on facilities capital	.....	.....	241,626	.....	195,060

[1] Hours.

VARIATION II—TOTAL COST INPUT ALLOCATION BASE INCLUDES COST OF MONEY

TABLE XIV—RECOMPUTATION OF ''A'' DIVISION TOTAL COST INPUT TO REFLECT INCLUSION OF COST OF MONEY

(a) Regular method:	
Total cost input per table VII	$36,700,000
Cost of money applicable to facilities capital identified with overhead pools per subtotal in column 5, table XV	661,600
Total cost input including cost of money	37,361,600
(b) Alternative method:	
Total cost input per table VII	36,700,000
Cost of money applicable to facilities capital identified with overhead pools per subtotal in column 5, table XVI	385,600
Total cost input including cost of money	37,085,900

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TABLE XV

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Regular" Method - Cost of Money Included in Total Cost Input)

CONTRACTOR: ABC Corp.

ADDRESS:

BUSINESS UNIT: A Division

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE 8 %	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED	Table IX	8,270,000	BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1 x 4	IN UNIT(S) OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP	Table VI	450,000	Worksheet Table X			TableVII & Table XIV	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering	Table IX	320,000	756,000	1,076,000	86,080	$ 2,000,000	.04304
	Manufacturing	Table IX	4,500,000	2,250,000	6,750,000	540,000	$ 3,000,000	.18
	Technical Computer			444,000	444,000	35,520	2,280 hr	15.57895
	Subtotal: Cost of Money							
	to be included in Total							
	Cost Input					661,600		
G & A EXPENSE POOLS	G&A Expense	Table VI	450,000		450,000	36,000	$37,361,600	.00096
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////////	//////////////

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TABLE XVI

FACILITIES CAPITAL
COST OF MONEY FACTORS COMPUTATION
("Alternative" Method - Cost of Money Include in Total Cost Input)

CONTRACTOR: ABC Corp.

ADDRESS:

BUSINESS UNIT: A Division

COST ACCOUNTING PERIOD: Y.E. 12/31/75		1. APPLICABLE COST OF MONEY RATE 8 %	2. ACCUMULATION & DIRECT DISTRIBUTION OF N.B.V.	3. ALLOCATION OF UNDISTRIBUTED	4. TOTAL NET BOOK VALUE	5. COST OF MONEY FOR THE COST ACCOUNTING PERIOD	6. ALLOCATION BASE FOR THE PERIOD	7. FACILITIES CAPITAL COST OF MONEY FACTORS
BUSINESS UNIT FACILITIES CAPITAL	RECORDED	Table IX	8,270,000	BASIS OF ALLOCATION	COLUMNS 2 + 3	COLUMNS 1 x 4	IN UNIT(S) OF MEASURE	COLUMNS 5 ÷ 6
	LEASED PROPERTY							
	CORPORATE OR GROUP	Table VI	450,000	All to G&A Expense Pool			TableVII & Table XIV	
	TOTAL		8,720,000					
	UNDISTRIBUTED		3,450,000					
	DISTRIBUTED		5,270,000					
OVERHEAD POOLS	Engineering	Table IX	320,000		320,000	25,600	$ 2,000,000	.0128
	Manufacturing	Table IX	4,500,000		4,500,000	360,000	$ 3,000,000	.12
	Subtotal: Cost of Money							
	to be included in Total							
	Cost Input					385,600		
G & A EXPENSE POOLS	G&A Expense	Table VI	450,000	3,450,000	3,900,000	312,000	$37,085,600	.00841
TOTAL			5,270,000	3,450,000	8,720,000	697,600	//////////////	//////////////

TABLE XVII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL

[Cost of money included in total cost input—regular method]

Allocation base	Allocated to contract, table VIII	Computation using regular facilities, capital cost of money factor, table XV	Amount
Engineering labor	$330,000	0.04304	$14,203
Manufacturing labor	1,210,000	.18	217,800
Technical computer time	[1] 280	15.57895	4,362
Cost of money related to overheads			236,365
Cost of money above to be included in cost input	236,365		
Cost input, table VIII	5,369,000		
Cost input including cost of money	5,605,365	.00096	5,381
Total cost of money on facilities capital			241,674

[1] Hours.

TABLE XVIII—SUMMARY OF COST OF MONEY COMPUTATION ON FACILITIES CAPITAL

[Cost of money included in total cost input—alternative method]

Allocation base	Allocated to contract, table VIII	Computation using alternative facilities, capital cost of money factor, table XVI	Amount
Engineering labor	$330,000	0.0128	$4,224
Manufacturing labor	1,210,000	.12	145,200
Cost of money related to overheads			149,424
Cost of money above to be included in cost input	149,424		
Cost input, table VIII	5,369,000		
Cost input including cost of money	5,518,424	.00841	46,410
Total cost of money on facilities capital	5,518,424		195,834

[57 FR 14153, Apr. 17, 1992; 57 FR 34081, 34167, Aug. 3, 1992]

9904.415 Accounting for the cost of deferred compensation.

9904.415–10 [Reserved]

9904.415–20 Purpose.

(a) The purpose of this Standard is to provide criteria for the measurement of the cost of deferred compensation and the assignment of such cost to cost accounting periods. The application of these criteria should increase the probability that the cost of deferred compensation is allocated to cost objectives in a uniform and consistent manner.

(b) This Standard is applicable to the cost of all deferred compensation except for compensated personal absence and pension plan costs which are covered in other Cost Accounting Standards.

9904.415–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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 prior to 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.

(b) The following modifications of terms defined elsewhere in this chapter

99 are applicable to this Standard: None.

9904.415–40 Fundamental requirement.

(a) The cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee. In the event no obligation is incurred prior to payment, the cost of deferred compensation shall be the amount paid and shall be assigned to the cost accounting period in which the payment is made.

(b) The measurement of the amount of the cost of deferred compensation shall be the present value of the future benefits to be paid by the contractor.

(c) The cost of each award of deferred compensation shall be considered separately for purposes of measurement and assignment of such costs to cost accounting periods. However, if the cost of deferred compensation for the employees covered by a deferred compensation plan can be measured with reasonable accuracy on a group basis, separate computations for each employee are not required.

9904.415–50 Techniques for application.

(a) The contractor shall be deemed to have incurred an obligation for the cost of deferred compensation when all of the following conditions have been met. However, for awards which require that the employee perform future service in order to receive the benefits, the obligation is deemed to have been incurred as the future service is performed for that part of the award attributable to such future service:

(1) There is a requirement to make the future payment(s) which the contractor cannot unilaterally avoid.

(2) The deferred compensation award is to be satisfied by a future payment of money, other assets, or shares of stock of the contractor.

(3) The amount of the future payment can be measured with reasonable accuracy.

(4) The recipient of the award is known.

(5) If the terms of the award require that certain events must occur before an employee is entitled to receive the benefits, there is a reasonable probability that such events will occur.

(6) For stock options, there must be a reasonable probability that the options ultimately will be exercised.

(b) If any of the conditions in 9904.415–50(a) is not met, the cost of deferred compensation shall be assignable only to the cost accounting period or periods in which the compensation is paid to the employee.

(c) If the cost of deferred compensation can be estimated with reasonable accuracy on a group basis, including consideration of probable forfeitures, such estimate may be used as the basis for measuring and assigning the present value of future benefits.

(d) The following provisions are applicable for plans that meet the conditions of 9904.415–50(a) and the compensation is to be paid in money.

(1) If the deferred compensation award provides that the amount to be paid shall include the principal of the award plus interest at a rate fixed at the date of award, such interest shall be included in the computation of the amount of the future benefit. If no interest is included in the award, the amount of the future benefit is the amount of the award.

(2) If the deferred compensation award provides for payment of principal plus interest at a rate not fixed at the time of award but based on a specified index which is determinable in each applicable cost accounting period; e.g., a published corporate bond rate, such interest shall be included in the computation of the amount of future benefit. The interest rate to be used shall be the rate in effect at the close of the period in which the cost of deferred compensation is assignable. Since that interest rate is likely to vary from the actual rates in future periods, adjustments shall be made in any such future period in which the variation in rates materially affects the cost of deferred compensation.

(3) If the deferred compensation award provides for payment of principal plus interest at a rate not based on a specified index, or not determinable in each applicable year, the—

(i) Cost of deferred compensation for the principal of the award shall be measured by the present value of the

future benefits of the principal, and shall be assigned to the cost accounting period in which the employer incurs an obligation to compensate the employee; and

(ii) Interest on such awards shall be assigned to the cost accounting period(s) in which the payment of the deferred compensation is made.

(4) If the terms of the award require that the employee perform future service in order to receive benefits, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost of deferred compensation for each cost accounting period shall be the present value of the future benefits of the deferred compensation calculated as of the end of each such period to which such cost is assigned.

(5) In computing the present value of the future benefits, the discount rate shall be equal to the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 stat. 97 at the time the cost is assignable.

(6) If the award is made under a plan which requires irrevocable funding for payment to the employee in a future cost accounting period together with all interest earned thereon, the amount assignable to the period of award shall be the amount irrevocably funded.

(7) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction for a forfeiture shall be the amount of the award that was assigned to a prior period, plus interest compounded annually, using the same Treasury rate that was used as the discount rate at the time the cost was assigned. For irrevocably funded plans, pursuant to 9904.415–50(d)(6), the amount of the reduction for a forfeiture shall be the amount initially funded plus or minus a pro-rata share of the gains and losses of the fund.

(8) If the cost of deferred compensation for group plans measured in accordance with 9904.415–50(c) is determined to be greater than the amounts initially assigned because the forfeiture was overestimated, the additional cost shall be assignable to the cost accounting period in which such cost is ascertainable.

(e) The following provisions are applicable for plans that meet the conditions of 9904.415–50(a) and the compensation is received by the employee in other than money. The measurements set forth herein constitute the present value of future benefits for awards made in other than money and, therefore, shall be deemed to be a reasonable measure of the amount of the future payment:

(1) If the award is made in the stock of the contractor, the cost of deferred compensation for such awards shall be based on the market value of the stock on the measurement date; i.e., the first date the number of shares awarded is known. Market value is the current or prevailing price of the security as indicated by market quotations. If such values are unavailable or not appropriate (thin market, volatile price movements, etc.) and acceptable alternative is the fair value of the stock.

(2) If an award is made in the form of options to employees to purchase stock of the contractor, the cost of deferred compensation of such award shall be the amount by which the market value of the stock exceeds the option price multiplied by the number of shares awarded on the measurement date; i.e., the first date on which both the option price and the number of shares is known. If the option price on the measurement date is equal to or greater than the market value of the stock, no cost shall be deemed to have been incurred for contract costing purposes.

(3) If the terms of an award of stock or stock option require that the employee perform future service in order to receive the stock or to exercise the option, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the stock or stock option at the measurement date as prescribed in 9904.415–50 (e)(1) or (e)(2).

(4) If an award is made in the form of an asset other than cash, the cost of

deferred compensation for such award shall be based on the market value of the asset at the time the award is made. If a market value is not available, the fair value of the asset shall be used.

(5) If the terms of an award, made in the form of an asset other than cash, require that the employee perform future service in order to receive the asset, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the asset at the time of award as prescribed in 9904.415–50(e)(4).

(6) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction shall be equal to the amount of the award that was assigned to a prior period, plus interest compounded annually, using the Treasury rate (see 9904.415–50(d)(5)) that was in effect at the time the cost was assigned. If the recipient of the award of stock options voluntarily fails to exercise such options, such failure shall not constitute a forfeiture under provisions of this Standard.

(7) Stock option awards or any other form of stock purchase plans containing all of the following characteristics shall be considered noncompensatory and not covered by this Standard:

(i) Substantially all full-time employees meeting limited employment qualifications may participate.

(ii) Stock is offered equally to eligible employees or based on a uniform percentage of salary or wages.

(iii) An option or a purchase right must be exercisable within a reasonable period.

(iv) The discount from the market price of the stock is no greater than would be reasonable in an offer of stock to stockholders or others.

9904.415–60 Illustrations.

(a) Contractor A has a deferred compensation plan in which all cash awards are increased each year by an interest factor equivalent to the long-term borrowing rate of the contractor prevailing during each such year. The interest factor based on a variable long-term borrowing rate meets the criteria of 9904.415–50(d)(2). Consequently, the cost of deferred compensation for Contractor A shall be measured by the present value of the future benefits and shall be assigned to the cost accounting period in which the contractor initially incurs an obligation to compensate the employee. If the long-term borrowing rate for Contractor A was 9 percent at the close of the period to which the cost of deferred compensation was assignable, then that rate should be used to calculate the future benefit. Any adjustment in the cost of deferred compensation which results from a material change in the 9 percent rate in future applicable periods shall be made in each such future period or periods (see 9904.415–50(d)(2)).

(b) Contractor B made a deferred compensation award of $10,000 to an employee on December 31, 1976, for services performed in 1976 to be paid in equal annual payments of $2,000 starting at December 31, 1981. The terms of the award do not provide for an interest factor to be included in the payment; consequently, according to provisions of 9904.415–50(d)(1), interest may not be included in the computation of the future benefits. The assignable cost for 1976 is computed as follows, assuming that the interest rate determined by the Secretary of the Treasury (pursuant to Public Law 92–41), 85 Stat. 97 at the time of the award is 8 percent and the conditions set forth in 9904.415–50(a) are met.

Year	Amount of future payment × discount rate 8-percent present value factor=present value
1981	$2,000×0.6805=$1,361
1982	2,000×.6301=1,260
1983	2,000×.5834=1,167
1984	2,000×.5402=1,080
1985	2,000×.5002=1,000
Assignable cost for 1976	5,868

(c) Contractor C awarded stock options for 1,000 shares of the contractor to key employees on December 31, 1976,

under a deferred compensation plan requiring 2 years of additional service before the awards can be exercised. The facts and circumstances of the awards indicate that the deferred compensation applies only to the periods of future service. The market price of the stock was $26 per share, the option price was $22, and the interest rate established by the Secretary of the Treasury in effect at the time of award was 8 percent.

(1) In accordance with 9904.415–50(e)(2), the cost of the stock options is the amount by which the current value of the stock exceeds the option price multiplied by the number of shares awarded on the measurement date. Thus, the total cost of the stock options is 1,000 shares multiplied by the difference of the option price and the market price ($26–22) or $4,000.

(2) Under provisions of 9904.415–50(e)(3), the cost for stock options is assigned to each future cost accounting period in which employee service is required and is computed as follows:

	Assignable cost [1]
Year of required service:	
1977	$2,000
1978	2,000
Total amount of award	4,000

[1] Note that this illustration assumes that the facts and circumstances of the award indicate that the award relates equally to each period of future service. Thus, the assignable cost was allocated on a pro-rata basis.

(d)(1) Contractor D has a deferred compensation plan that specifies that an employee receiving a cash award must remain with the company for 3 calendar years after the award in order to qualify and receive the award and the facts and circumstances indicate that the deferred compensation applies only to the periods of future service. In accordance with 9904.415–50(d)(4), the cost of deferred compensation is assignable to the periods of future service. Thus, the amount of cost of deferred compensation to be assigned by Contractor D for each of the 3 years shall be the present value of the future benefits of the deferred compensation award calculated as of the end of each such period to which such cost is assigned.

(2) Under this plan, Contractor D made an award to an employee of $3,000 to be paid at the end of the third year. The assignable cost for each of the 3 years is computed as follows:

Year [1]	Amount of future payment		Present value factor [2] treasury rate [3]		Assignable cost for each year
1	$1,000	×	0.8573 (8 pct for 2 yr)	=	$857.30
2	1,000	×	0.9302 (7.5 pct for 1 yr)	=	930.20
3	1,000	×	1.000 (8 pct for 0 yr)	=	1,000.00

[1] Note that in accordance with the facts and circumstances of the award no deferred compensation is assignable to the period in which the award is made and that the award relates equally to each period of future service.
[2] Note that since the costs are measured at the end of each year of required service, the present value factors are based on the number of years from the year of assignment to the date of payment.
[3] Note that the prevailing Treasury rate changed from year 1 to year 2.

(e)(1) Contractor E has a deferred compensation plan that specifies that an employee receiving a cash award must remain with the company for 2 calendar years after the award in order to qualify and receive the award. Contractor E made an award of $6,000 at the end of 1976 to an employee to be paid at the end of 1978. However, the employee voluntarily terminated his employment before the end of 1977. The facts and circumstances of the award indicate that $2,000 of the award represents compensation for services rendered in the period of award (1976). The remaining portion of the award represents compensation for services to be rendered in future periods. The assignable cost for 1976, which was the only period to which costs were assigned before termination, was the present value

of $2,000, the amount of the award attributable to the services of that period. Thus, the cost assigned for 1976 was:

Amount of future payment×Discount rate present value factor for 2 yr at 8 pct=Assignable cost

$2,000×0.8573=$1,714.60

(2) According to provisions of 9904.415–50(d)(7), the amount of the forfeiture shall be the amount of the cost that was assigned to a prior period, plus interest compounded annually, from the year the cost was assigned to the year of forfeiture, using the same Treasury rate (see 9904.415–50(d)(5)) that was used as the discount rate at the time the cost was assigned. The IRS rate in effect at the date of award was 8 percent.

(3) The amount of the forfeiture is computed as follows:

Assignable cost×Discount rate future value for 1 yr at 8 pct=Forfeiture

$1,714.60×1.08=$1,851.77

9904.415–61 Interpretation. [Reserved]

9904.415–62 Exemption.

None for this Standard.

9904.415–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.416 Accounting for insurance costs.

9904.416–10 [Reserved]

9904.416–20 Purpose.

The purpose of this standard is to provide criteria for the measurement of insurance costs, the assignment of such costs to cost accounting periods, and their allocation to cost objectives. The application of these criteria should increase the probability that insurance costs are allocated to cost objectives in a uniform and consistent manner.

9904.416–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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 prior to the damage.

(2) *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 fee paid to insurance companies, trustees, or technical consultants.

(3) *Projected average loss* means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

(4) *Self-insurance* means the assumption or retention of the risk or loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

(5) *Self-insurance charge* means a cost which represents the projected average loss under a self-insurance plan.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.416–40 Fundamental requirement.

(a) The amount of insurance cost to be assigned to a cost accounting period is the projected average loss for that period plus insurance administration expenses in that period.

(b) The allocation of insurance costs to cost objectives shall be based on the beneficial or casual relationship between the insurance costs and the benefiting or causing cost objectives.

9904.416–50 Techniques for application.

(a) *Measurement of projected average loss.* (1) For exposure to risk of loss

which is covered by the purchase of insurance or by payments to a trusteed fund, the premium or payment, adjusted in accordance with the following criteria, shall represent the projected average loss:

(i) The premium cost applicable to a given policy term shall be assigned pro rata among the cost accounting periods covered by the policy term, except as provided in subdivisions (a)(1) (ii) through (vi) of this subsection. A refund, dividend or additional assessment shall become an adjustment to the pro rata premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(ii) Where insurance is purchased specifically for, and directly allocated to, a single final cost objective, the premium need not be prorated among cost accounting periods.

(iii) Any part of a premium or payment to an insurer or trustee, or any part of a dividend or premium refund retained by an insurer or trustee which would be includable as a deposit in published financial statements prepared in accordance with generally accepted accounting principles shall be accounted for as a deposit for the purpose of determining insurance costs.

(iv) Any part of a premium or payment to an insurer or to a trustee, or any part of a dividend or premium refund retained by an insurer, for inclusion in a reserve or fund established and maintained on behalf of the insured or the policyholder or trustor, shall be accounted for as a deposit unless the following conditions are met:

(A) The objectives of the reserve or fund are clearly stated in writing.

(B) Measurement of the amount required for the reserve or fund is actuarially determined and is consistent with the objectives of the reserve or fund.

(C) Payments and additions to the reserve or fund are made in a systematic and consistent manner.

(D) If payments to accomplish the stated objectives of the reserve or fund are made from a source other than the reserve or fund, the payments into the reserve or fund are reduced accordingly.

(v) If an objective of an insurance program is to prefund insurance coverage on retired persons, then, in addition to the requirements imposed by subdivision (a)(1)(iv) of this subsection, the:

(A) Payments must be made to an insurer or trustee to establish and maintain a fund or reserve for that purpose;

(B) Policyholder or trustor must have no right of recapture of the reserve or fund so long as any active or retired participant in the program remains alive, unless the interests of such remaining participants are satisfied through adequate reinsurance or otherwise; and

(C) Amount added to the reserve or fund in any cost accounting period must not be greater than an amount which would be required to apportion the cost of the insurance coverage fairly over the working lives of the active employees in the plan. If a contractor establishes a terminal-funded plan for retired persons or converts from a pay-as-you-go plan to a terminal-funded plan, the actuarial present value of benefits applicable to employees already retired shall be amortized over a period of 15 years.

(vi) The contractor may adopt and consistently follow a practice of determining insurance costs based on the estimated premium and assessments net of estimated refunds and dividends. If this practice is adopted, then any difference between an estimated and actual refund, dividend, or assessment shall become an adjustment to the pro rata net premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(2) For exposure to risk of loss which is not covered by the purchase of insurance or by payments to a trusteed fund, the contractor shall follow a program of self-insurance accounting according to the following criteria:

(i) Except as provided in subdivisions (a)(2)(ii) and (iii) of this subsection, actual losses shall not become a part of insurance costs. Instead, the contractor shall make a self-insurance charge for each period for each type of self-insured risk which shall represent the projected average loss for that period.

If insurance could be purchased against the self-insured risk, the cost of such insurance may be used as an estimate of the projected average loss; if this method is used, the self-insurance charge plus insurance administration expenses may be equal to, but shall not exceed, the cost of comparable purchased insurance plus the associated insurance administration expenses. However, the contractor's actual loss experience shall be evaluated regularly, and self-insurance charges for subsequent periods shall reflect such experience in the same manner as would purchased insurance. If insurance could not be purchased against the self-insured risk, the amount of the self-insurance charge for each period shall be based on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with accepted actuarial principles.

(ii) Where it is probable that the actual amount of losses which will occur in a cost accounting period will not differ significantly from the projected average loss for that period, the actual amount of losses in that period may be considered to represent the projected average loss for that period in lieu of a self-insurance charge.

(iii) Under self-insurance programs for retired persons, only actual losses shall be considered to represent the projected average loss unless a reserve or fund is established in accordance with 9904.416–50(a)(1)(v).

(iv) The self-insurance charge shall be determined in a manner which will give appropriate recognition to any indemnification agreement which exists between the contracting parties.

(3) In measuring actual losses under subparagraph (a)(2) of this subsection:

(i) The amount of a loss shall be measured by:

(A) The actual cash value of property destroyed,

(B) Amounts paid or accrued to repair damage,

(C) Amounts paid or accrued to estates and beneficiaries, and

(D) Amounts paid or accrued to compensate claimants, including subrogation.

Where the amount of a loss which is represented by a liability to a third party is uncertain, the estimate of the loss shall be the amount which would be includable as an accrued liability in financial statements prepared in accordance with generally accepted accounting principles.

(ii) If a loss has been incurred and the amount of the liability to a claimant is fixed or reasonably certain, but actual payment of the liability will not take place for more than 1 year after the loss is incurred, the amount of the loss to be recognized currently shall be the present value of the future payments, determined by using a discount rate equal to the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 stat. 97 in effect at the time the loss is recognized. Alternatively, where settlement will consist of a series of payments over an indefinite time period, as in workmen's compensation, the contractor may follow a consistent policy of recognizing only the actual amounts paid in the period of payment.

(4) The contractor may elect to recognize immaterial amounts of self-insured losses or insurance administration expenses as part of other expense categories rather than as ''insurance costs.''

(b) *Allocation of insurance costs.* (1) Where actual losses are recognized as an estimate of the projected average loss, in accordance with 9904.416–50(a)(2), or where actual loss experience is determined for the purpose of developing self-insurance charges by segment, a loss which is incurred in a given segment shall be identified with that segment. However, if the contractor's home office is, in effect, a reinsurer of its segments against catastrophic losses, a portion of such catastrophic losses shall be allocated to, or identified with, the home office.

(2) Insurance costs shall be allocated on the basis of the factors used to determine the premium, assessment, refund, dividend, or self-insurance charge, except that insurance costs incurred by a segment or allocated to a segment from a home office may be combined with costs of other indirect cost pools if the resultant allocation to each final cost objective is substantially the same as it would have been if

separately allocated under this provision.

(3) Insurance administration expenses which are material in relation to total insurance costs shall be allocated on the same basis as the related premium costs or self-insurance charge.

(c) *Records.* The contractor shall maintain such records as may be necessary to substantiate the amounts of premiums, refunds, dividends, losses, and self-insurance charges, paid or accrued, and the measurement and allocation of insurance costs. Memorandum records may be used to reflect any material differences between insurance costs as determined in accordance with this standard and as includable in financial statements prepared in accordance with generally accepted accounting principles.

[57 FR 14153, Apr. 17, 1992; 57 FR 34168, Aug. 3, 1992]

9904.416–60 Illustrations.

(a) Contractor A pays a company-wide property and casualty insurance premium for the policy term July 1, 1980, to July 1, 1983, and includes the entire amount as cost in its cost accounting period which ended December 31, 1980. This is a violation of 9904.416–50(a)(1)(i) in that only one-sixth of the policy term fell within the cost accounting period which ended December 31, 1980, and therefore only one-sixth of the premium should have been included in cost in that cost accounting period.

(b) Contractor B has a retrospectively rated worker's compensation insurance program. The policy term corresponds with the contractor's cost accounting period. Premium refunds are normally received and applied in the following cost accounting period. The contractor's practice is to include the entire gross premium in insurance cost in the cost accounting period in which it is paid and to credit the refund against insurance cost in the cost accounting period in which it is received. This practice conforms with 9904.416–50(a)(1)(i). The contractor could also, under the provisions of 9904.416–50(a)(1)(vi), have followed a consistent practice of estimating such refunds in advance and including the estimated net premium in insurance cost.

(c) Contractor C establishes a self-insured program of life insurance for active and retired persons. The contractor pays death benefits directly to the beneficiaries of deceased employees and includes such payments in insurance costs at the time of payment. This practice complies with 9904.416–50(a)(2)(iii) which requires that only the actual losses be recognized unless a trusteed reserve or fund is established in accordance with 9904.416–50(a)(1)(v).

(d) Instead of paying death benefits directly, contractor D purchases annual group term life insurance on active and retired persons and charges the premiums to insurance costs (with proper recognition for refunds and dividends). Contractor D's retired persons wish to be protected against possible discontinuance of the program. Contractor D, therefore, establishes a trusteed fund. As each employee retires, contractor D deposits in the fund an amount which is equal to the premium on a paid-up policy for that employee, and he advises the trustee that the fund is to be used to continue to pay premiums on retired persons in the event the program is discontinued. The contractor also continues to purchase group term insurance on both active employees and retired persons and charges both the premiums and the deposits to insurance costs. This practice does not comply with 9904.416–50(a)(1)(iv)(D) which requires that if payments to accomplish the stated objectives of the reserve or funds are made from a source other than the reserve or fund, the payments into the fund shall be reduced accordingly.

NOTE: In this instance the contractor could comply with the standard by paying from the fund that portion of the group term premium which represented the retired persons or by reducing the deposits to the fund by an equivalent amount in accordance with 9904.416–50(a)(1)(iv)(D). This practice would also comply with the requirement of 9904.416–50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to fairly allocate the cost over the working lives of the active employees in the plan.

(e) Contractor E wishes to provide assurance of his life insurance program continuance to both active and retired employees. He establishes a trusteed

fund in accordance with 9904.416–50(a)(1) (iv) and (v) and thereafter pays into the fund each year for each active employee an actuarially determined amount which will accumulate to the equivalent of the premium on a paid-up life insurance policy at retirement. He charges the annual payments to insurance costs. Benefits are paid directly from the fund (or the fund is used to pay the annual premiums on group term life insurance for all employees). This practice also complies with the requirement of 9904.416–50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to fairly allocate the cost over the working lives of the active employees in the plan.

(f) Contractor F has a fire insurance policy which provides that the first $50,000 of any fire loss will be borne by the contractor. Because the risk of loss is dispersed among many physical units of property and the average potential loss per unit is relatively low, the actual losses in any period may be expected not to differ significantly from the projected average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. Property with an actual cash value of $80,000 is destroyed in a fire. The contractor charges the $50,000 of the loss not covered by the policy to insurance costs for contract costing purposes. The practice complies with the requirement of 9904.416–50(a)(2). However, had the contractor's plan been to make a self-insurance charge for such losses, then any difference between the self-insurance charge and actual losses in that cost accounting period would not have been allocable as an insurance cost.

(g) Contractor G is preparing to enter into a Government contract to produce explosive devices. The contractor is unable to purchase adequate insurance protection and must act as a self-insurer. There is a significant possibility of a major loss, against which the Government will not undertake to indemnify the contractor. The contractor, therefore, intends to make a self-insurance charge for this exposure to risk. The contractor may, in accordance with 9904.416–50(a)(2)(i), use data obtained from other contractors or any other reasonable method of estimating the projected average loss in order to determine the self-insurance charge.

(h) Contractor H purchases liability insurance for all of its motor vehicles in a single, company-wide policy which contains a $50,000 deductible provision. However, the company's management policy provides that when a loss is incurred in a segment, only the first $5,000 of the loss will be charged to the segment; the balance of the loss will be absorbed at the home-office level and reallocated among all segments. Because the risk of loss is dispersed among many physical units and the maximum potential loss per occurrence is limited, the actual losses in any cost accounting period may be expected not to differ significantly from the projected average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. An analysis of the loss experience shows that many past losses exceeded $5,000. Contractor H's practice of allocating the loss in excess of $5,000 to the home office is a violation of 9904.416–50(b)(1). The limit of $5,000 cannot realistically be considered a measure of a ''catastrophic'' loss when losses frequently exceed this amount, and the use of a limit this low would obscure segment loss experience.

9904.416–61 Interpretation. [Reserved]

9904.416–62 Exemption.

None for this Standard.

9904.416–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.417 Cost of money as an element of the cost of capital assets under construction.

9904.417–10 [Reserved]

9904.417–20 Purpose.

The purpose of this Cost Accounting Standard is to establish criteria for the measurement of the cost of money attributable to capital assets under construction, fabrication, or development as an element of the cost of those assets. Consistent application of these criteria will improve cost measurement by providing for recognition of cost of contractor investment in assets under construction, and will provide greater uniformity in accounting for asset acquisition costs.

9904.417–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *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.

(2) *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 of possession beyond the current accounting period for the services it yields.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.417–40 Fundamental requirement.

The cost of money applicable to the investment in tangible and intangible capital assets being constructed, fabricated, or developed for a contractor's own use shall be included in the capitalized acquisition cost of such assets.

9904.417–50 Techniques for application.

(a) The cost of money for an asset shall be calculated as follows:

(1) The cost of money rate used shall be based on interest rates determined by the Secretary of the Treasury pursuant to Public Law 92–41 (85 stat. 97).

(2) A representative investment amount shall be determined each cost accounting period for each capital asset being constructed, fabricated, or developed giving appropriate consideration to the rate at which costs of construction are incurred.

(3) Other methods for calculating the cost of money to be capitalized, such as the method used for financial accounting and reporting, may be used, provided the resulting amount does not differ materially from the amount calculated by use of paragraphs (a) (1) and (2) of this subsection.

(b) If substantially all the activities necessary to get the asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance. However, if such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor, cessation of cost of money capitalization is not required.

9904.417–60 Illustrations.

(a) A contractor decided to build a major addition to this plant using both his own labor and outside subcontractors. It took 13 months to complete the building. The first 10 months of the construction period were in one cost accounting period. At the end of the cost accounting period the total charges, including cost of money computed in accordance with 9904.414, accumulated in the construction-in-progress account for this project amounted to $750,000. However, most of these construction costs were incurred towards the end of the cost accounting period. In developing a method for determining a representative investment amount, appropriate consideration must be given to the rate at which costs have been incurred in accordance with 9904.417–50(a)(2). Therefore, the contractor averaged the 10 month-end balances and determined that the average investment in the project was

$245,000. Two cost of money rates were in effect during the 10-month period; their time-weighted average was determined to be 8.6 percent. Application of the 8.6 percent rate for ten-twelfths of a year to the representative balance of $245,000 resulted in the determination that $17,558 should be added to the construction-in-progress account in recognition of the cost of money related to this project in its first cost accounting period. The project was completed with the addition of $750,000 of additional costs during the first 3 months of the subsequent cost accounting period. The contractor considered the 3 month-end balances (which included the $17,558 capitalized cost of money described in the preceding paragraph) and determined that the representative balance was $1,234,000. The cost of money rate in effect during this 3-month period was 7.75 percent. Applying the rate of 7.75 percent for one-fourth of a year to the balance of $1,234,000 resulted in a determination that $23,909 should be added to the construction-in-progress account in recognition of the cost of money while under construction in the second cost accounting period. The capitalized project was put into service at the recognized cost of acquisition of $1,541,467 which consists of the ''regular'' costs of $1,500,000 plus $17,558 and $23,909 cost of money. This practice is in accordance with 9904.417–50(a) and other applicable provisions of the Standard.

NOTE: An alternative technique would be to make separate calculations, using an appropriate investment amount and cost of money rate, for each month. The sum of the monthly cost of money amounts could be entered in the construction-in-progress account once each cost accounting period.

(b) A contractor built a major addition with identical basic data to those described in 9904.417–60(a) except that the costs were incurred at a fairly uniform rate throughout the period. Because of the pattern of cost incurrence, the contractor used beginning and ending balances of the cost accounting period to find the representative amounts. For the first cost accounting period the representative investment amount was the average of the beginning and ending balances (zero and $750,000), or $375,000. Application of the average interest rate of 8.6 percent for ten-twelfths of a year resulted in the determination that $26,875 should be added to the construction-in-progress account in recognition of the cost of money related to this project in its first cost accounting period. During the subsequent 3 months the contractor used the representative balance of $1,151,875, derived by averaging the beginning balance of $776,875 ($750,000 ''regular'' cost plus the $26,875 imputed cost from the prior period) and the balance at the end, $1,526,875. Applying the 7.75 percent cost of money rate to this balance for a 3-month period resulted in a determination that $22,317 should be added to the construction-in-progress account in recognition of the cost of money while under construction in the second cost accounting period. The capitalized project was put into service at the recognized cost of acquisition of $1,549,192 which consists of the ''regular'' costs of $1,500,000 plus $26,875 and $22,317 imputed cost of money. This practice is in accordance with 9904.417–50(a) and other applicable provisions of the Standard.

NOTE: If this contractor, acting in accordance with established Standards for financial accounting, allocated a portion of its paid interest expense to this construction project and the resultant acquisition cost for financial reporting purposes was not materially different from $1,549,192, the contractor could, in accordance with 9904.417–50(a)(iii), use the same acquisition cost for contract costing purposes.

[57 FR 14153, Apr. 17, 1992; 57 FR 34081, Aug. 3, 1992]

9904.417–61 Interpretation. [Reserved]

9904.417–62 Exemption.

None for this Standard.

9904.417–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's next full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.418 Allocation of direct and indirect costs.

9904.418–10 [Reserved]

9904.418–20 Purpose.

The purpose of this Cost Accounting Standard is to provide for consistent determination of direct and indirect costs; to provide criteria for the accumulation of indirect costs, including service center and overhead costs, in indirect cost pools; and, to provide guidance relating to the selection of allocation measures based on the beneficial or causal relationship between an indirect cost pool and cost objectives. Consistent application of these criteria and guidance will improve classification of costs as direct and indirect and the allocation of indirect costs.

9904.418–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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.

(2) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.418–40 Fundamental requirements.

(a) A business unit shall have a written statement of accounting policies and practices for classifying costs as direct or indirect which shall be consistently applied.

(b) Indirect costs shall be accumulated in indirect cost pools which are homogeneous.

(c) Pooled costs shall be allocated to cost objectives in reasonable proportion to the beneficial or causal relationship of the pooled costs to cost objectives as follows:

(1) If a material amount of the costs included in a cost pool are costs of management or supervision of activities involving direct labor or direct material costs, resource consumption cannot be specifically identified with cost objectives. In that circumstance, a base shall be used which is representative of the activity being managed or supervised.

(2) If the cost pool does not contain a material amount of the costs of management or supervision of activities involving direct labor or direct material costs, resource consumption can be specifically identified with cost objectives. The pooled cost shall be allocated based on the specific identifiability of resource consumption with cost objectives by means of one of the following allocation bases:

(i) A resource consumption measure,

(ii) An output measure, or

(iii) A surrogate that is representative of resources consumed.

The base shall be selected in accordance with the criteria set out in 9904.418–50(e).

(d) To the extent that any cost allocations are required by the provisions of other Cost Accounting Standards, such allocations are not subject to the provisions of this Standard.

(e) This Standard does not cover accounting for the costs of special facilities where such costs are accounted for in separate indirect cost pools.

9904.418–50 Techniques for application.

(a) *Determination of direct cost and indirect cost.* (1) The business unit's written policy classifying costs as direct or indirect shall be in conformity with the requirements of this Standard.

(2) In accounting for direct costs a business unit shall use actual costs, except that—

(i) Standard costs for material and labor may be used as provided in 9904.407; or

(ii) An average cost or pre-established rate for labor may be used provided that:

(A) The functions performed are not materially disparate and employees involved are interchangeable with respect to the functions performed, or

(B) The functions performed are materially disparate but the employees involved either all work in a single production unit yielding homogeneous outputs, or perform their respective functions as an integral team.

Whenever average cost or pre-established rates for labor are used, the variances, if material, shall be disposed of at least annually by allocation to cost objectives in proportion to the costs previously allocated to these cost objectives.

(3) Labor or material costs identified specifically with one of the particular cost objectives listed in paragraph (d)(3) of this subsection shall be accounted for as direct labor or direct material costs.

(b) *Homogeneous indirect cost pools.* (1) An indirect cost pool is homogeneous if each significant activity whose costs are included therein has the same or a similar beneficial or causal relationship to cost objectives as the other activities whose costs are included in the cost pool. It is also homogeneous if the allocation of the costs of the activities included in the cost pool result in an allocation to cost objectives which is not materially different from the allocation that would result if the costs of the activities were allocated separately.

(2) An indirect cost pool is not homogeneous if the costs of all significant activities in the cost pool do not have the same or a similar beneficial or causal relationship to cost objectives and, if the costs were allocated separately, the resulting allocation would be materially different. The determination of materiality shall be made using the criteria provided in 9903.305.

(3) A homogeneous indirect cost pool shall include all indirect costs identified with the activity to which the pool relates.

(c) *Change in allocation base.* No change in an existing indirect cost pool allocation base is required if the allocation resulting from the existing base does not differ materially from the allocation that results from the use of the base determined to be most appropriate in accordance with the criteria set forth in paragraphs (d) and (e) of this subsection. The determination of materiality shall be made using the criteria provided in Subpart 9903.305.

(d) *Allocation measures for an indirect cost pool which includes a material amount of the costs of management or supervision of activities involving direct labor or direct material costs.* (1) The costs of the management or supervision of activities involving direct labor or direct material costs do not have a direct and definitive relationship to the benefiting cost objectives and cannot be allocated on measures of a specific beneficial or causal relationship. In that circumstance, the base selected to measure the allocation of the pooled costs to cost objectives shall be a base representative of the activity being managed or supervised.

(2) The base used to represent the activity being managed or supervised shall be determined by the application of the criteria below. All significant elements of the selected base shall be included.

(i) A direct labor hour base or direct labor cost base shall be used, whichever in the aggregate is more likely to vary in proportion to the costs included in the cost pool being allocated, except that:

(ii) A machine-hour base is appropriate if the costs in the cost pool are comprised predominantly of facility-related costs, such as depreciation, maintenance, and utilities; or

(iii) A units-of-production base is appropriate if there is common production of comparable units; or

(iv) A material cost base is appropriate if the activity being managed or supervised is a material-related activity.

(3) Indirect cost pools which include material amounts of the costs of management or supervision of activities involving direct labor or direct material costs shall be allocated to:

(i) Final cost objectives;

(ii) Goods produced for stock or product inventory;

(iii) Independent research and development and bid and proposal projects;

(iv) Cost centers used to accumulate costs identified with a process cost system (i.e., process cost centers);

(v) Goods or services produced or acquired for other segments of the contractor and for other cost objectives of a business unit; and

(vi) Self-construction, fabrication, betterment, improvement, or installation of tangible capital assets.

(e) *Allocation measures for indirect cost pools that do not include material amounts of the costs of management or supervision of activities involving direct labor or direct material costs.* Homogeneous indirect cost pools of this type have a direct and definitive relationship between the activities in the pool and benefiting cost objectives. The pooled costs shall be allocated using an appropriate measure of resource consumption. This determination shall be made in accordance with the following criteria taking into consideration the individual circumstances:

(1) The best representation of the beneficial or causal relationship between an indirect cost pool and the benefiting cost objectives is a measure of resource consumption of the activities of the indirect cost pool.

(2)(i) If consumption measures are unavailable or impractical to ascertain, the next best representation of the beneficial or causal relationship for allocation is a measure of the output of the activities of the indirect cost pool. Thus, the output is substituted for a direct measure of the consumption of resources.

(ii) The use of the basic unit of output will not reflect the proportional consumption of resources in circumstances in which the level of resource consumption varies among the units of output produced. Where a material difference will result, either the output measure shall be modified or more than one output measure shall be used to reflect the resources consumed to perform the activity.

(3) If neither resources consumed nor output of the activities can be measured practically, a surrogate that varies in proportion to the services received shall be used to measure the resources consumed. Generally, such surrogates measure the activity of the cost objectives receiving the service.

(4) Allocation of indirect cost pools which benefit one another may be accomplished by use of:

(i) The cross-allocation (reciprocal) method,

(ii) The sequential method, or

(iii) Another method the results of which approximate those achieved by either of the methods in subdivisions (e)(4)(i) or (e)(4)(ii) of this subsection.

(5) Where the activities represented by an indirect cost pool provide services to two or more cost objectives simultaneously, the cost of such services shall be prorated between or among the cost objectives in reasonable proportion to the beneficial or causal relationship between the services and the cost objectives.

(f) *Special allocation.* Where a particular cost objective in relation to other cost objectives receives significantly more or less benefit from an indirect cost pool than would be reflected by the allocation of such costs using a base determined pursuant to paragraphs (d) and (e) of this subsection, the Government and contractor may agree to a special allocation from that indirect cost pool to the particular cost objective commensurate with the benefits received. The amount of a special allocation to any such cost objective made pursuant to such an agreement shall be excluded from the indirect cost pool and the particular cost objective's allocation base data shall be excluded from the base used to allocate the pool.

(g) *Use of preestablished rates for indirect costs.* (1) Preestablished rates, based on either forecasted actual or standard cost, may be used in allocating an indirect cost pool.

(2) Preestablished rates shall reflect the costs and activities anticipated for

the cost accounting period except as provided in paragraph (g)(3) of this subsection. Such preestablished rates shall be reviewed at least annually, and revised as necessary to reflect the anticipated conditions.

(3) The contracting parties may agree on preestablished rates which are not based on costs and activities anticipated for a cost accounting period. The contractor shall have and consistently apply written policies for the establishment of these rates.

(4) Under paragraphs (g) (2) and (3) of this subsection where variances of a cost accounting period are material, these variances shall be disposed of by allocating them to cost objectives in proportion to the costs previously allocated to these cost objectives by use of the preestablished rates.

(5) If preestablished rates are revised during a cost accounting period and if the variances accumulated to the time of the revision are significant, the costs allocated to that time shall be adjusted to the amounts which would have been allocated using the revised preestablished rates.

9904.418–60 Illustrations.

(a) Business Unit A has various classifications of engineers whose time is spent in working directly on the production of the goods or services called for by contracts and other final cost objectives. In keeping with its written policy, detailed time records are kept of the hours worked by these engineers, showing the job/account numbers representing various cost objectives. On the basis of these detailed time records, Unit A allocates the labor costs of these engineers as direct labor costs of final cost objectives. This practice is in accordance with the requirements of 9904.418–50(a)(1).

(b) Business Unit B has a fabrication department, employees of which perform various functions on units of the work-in-process of multiple final cost objectives. These employees are grouped by labor skills and are interchangeable within the skill grouping. The average wage rate for each group is multiplied by the hours worked on each cost objective by employees in that group. The contractor classifies these costs as direct labor costs of each final cost objective. This cost accounting treatment is in accordance with the provisions of 9904.418–50(a)(2)(ii)(B).

(c) Business Unit C accumulates the costs relating to building ownership, maintenance, and utility into one indirect cost pool designated ''Occupancy Costs'' for allocation to cost objectives. Each of these activites has the same or a similar beneficial or causal relationship to the cost objectives occupying a space. Unit C's practice is in conformance with the provisions of 9904.418–50(b)(1).

(d) Business Unit D includes the indirect costs of machining and assembling activities in a single manufacturing overhead pool. The machining activity does not have the same or similar beneficial or causal relationship to cost objectives as the assembling activity. Also, the allocation of the cost of the machining activity to cost objectives would be significantly different if allocated separately from the cost of the assembling activity. Unit D's single manufacturing overhead pool is not homogeneous in accordance with the provisions of 9904.418–50(b), and separate pools must be established in accordance with 9904.418–40(b).

(e) In accordance with 9904.418–50(b)(3), Business Unit E includes all the cost of occupancy in an indirect cost pool. In selecting an allocation measure for this indirect cost pool, the contractor establishes that it is impractical to ascertain a measurement of the consumption of resources in relation to the use of facilities by individual cost objectives. An output base, the number of square feet of space provided to users, can be measured practically; however, the cost to provide facilities is significantly different for various types of facilities such as warehouse, factory, and office and each type of facility requires a different level of resource consumption to provide the same number of square feet of usable space. Allocation on a basic unit measure of square feet of space occupied will not adequately reflect the proportional consumption of resources. Unit E establishes a weighted square foot measure for allocating occupancy costs, which reflects the different levels of resource consumption required to provide the different types of facilities.

This practice is in conformance with provisions of 9904.418–50(e)(2)(ii).

(f) Business Unit F has an indirect cost pool containing a significant amount of material-related costs. The contractor allocates these costs between his machining overhead cost pool and his assembly overhead cost pool. The business unit finds it impractical to use an allocation measure based on either consumption or output. The business unit selects a dollars of material-issued base which varies in proportion to the services rendered. The dollars of material-issued base is a surrogate base which conforms to the provisions of 9904.418–50(e)(3).

(g) Business Unit G has a machining activity for which it develops a separate overhead rate, using direct labor cost as the allocation base. The machining activity occasionally does significant amounts of work for other activities of the business unit. The labor used in doing the work for other activities is of the same nature as that used for contract work. However, the machining labor for other activities is not included in the base used to allocate the overhead costs of the machining activity. This practice is not in conformance with 9904.418–50(d)(2). Unit G must include the cost of labor doing work for the other activities in the allocation base for the machining activity indirect cost pool.

(h) Business Unit H accounts for the costs of company aircraft in a separate homogeneous indirect cost pool and allocates the cost to benefiting cost objectives using flight hours. Unit H prorates the cost of a single flight between benefiting cost objectives whenever simultaneous services have been rendered. Manager of Contract 2 learns of the trip and goes along with Manager of Contract 1. Unit H prorates the cost of the trip between Contract 1 and Contract 2. This practice is in conformance with the provision of 9904.418–50(e)(5).

(i) During a cost accounting period, Business Unit I allocates the cost of its flight services indirect cost pool to other indirect cost pools and final cost objectives using a preestablished rate. The preestablished rate is based on an estimate of the actual costs and activity for the cost accounting period. For the cost accounting period, Unit I establishes a rate of $200 per hour for use of the flight services activity. In March, the contractor's operating environment changes significantly; the contractor now expects a significant increase in the cost of this activity during the remainder of the year. Unit I estimates the rate for the entire cost accounting period to be $240 an hour. Pursuant to the provisions of 9904.418–50(g)(4), the Business Unit may revise its rate to the expected $240 an hour. If the accumulated variances are significant, the business unit must also adjust the costs previously allocated to reflect the revised rates.

9904.418–61 Interpretation. [Reserved]

9904.418–62 Exemptions.

This Standard shall not apply to contracts and grants with state, local, and Federally recognized Indian tribal governments.

9904.418–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's second full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

9904.420 Accounting for independent research and development costs and bid and proposal costs.

9904.420–10 [Reserved]

9904.420–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the accumulation of independent research and development costs and bid and proposal costs and for the allocation of such costs to cost objectives based on the beneficial or causal relationship between such costs and cost objectives. Consistent application of these criteria will improve cost allocation.

9904.420–30 Definitions.

(a) The following are definitions of terms which are prominent in this

Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *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.

(2) *Bid and proposal (B&P) cost* means the cost incurred in preparing, submitting, or supporting any bid or proposal which effort is neither sponsored by a grant, nor required in the performance of a contract.

(3) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(4) *General and administrative (G&A) expense* means any management, financial, and other expenses 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.

(5) *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.

(6) *Independent research and development* means the cost of effort which is neither sponsored by a grant, nor required in the performance of a contract, and which falls within any of the following three areas:

(i) Basic and applied research,

(ii) Development, and

(iii) Systems and other concept formulation studies.

(7) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(8) *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 Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organizations has less than a majority of ownership, but over which it exercises control.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9904.420–40 Fundamental requirement.

(a) The basic unit for the identification and accumulation of Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs shall be the individual IR&D or B&P project.

(b) The IR&D and B&P project costs shall consist of all allocable costs, except business unit general and administrative expenses.

(c) The IR&D and B&P cost pools consist of all IR&D and B&P project costs and other allocable costs, except business unit general and administrative expenses.

(d) The IR&D and B&P cost pools of a home office shall be allocated to segments on the basis of the beneficial or causal relationship between the IR&D and B&P costs and the segments reporting to that home office.

(e) The IR&D and B&P cost pools of a business unit shall be allocated to the final cost objectives of that business unit on the basis of the beneficial or causal relationship between the IR&D and B&P costs and the final cost objectives.

(f)(1) The B&P costs incurred in a cost accounting period shall not be assigned to any other cost accounting period.

(2) The IR&D costs incurred in a cost accounting period shall not be assigned to any other cost accounting period, except as may be permitted pursuant to provisions of existing laws, regulations, and other controlling factors.

9904.420–50 Techniques for application.

(a) The IR&D and B&P project costs shall include (1) costs, which if incurred in like circumstances for a final cost objective, would be treated as direct costs of that final cost objective, and (2) the overhead costs of productive activities and other indirect costs related to the project based on the contractor's cost accounting practice or applicable Cost Accounting Standards for allocation of indirect costs.

(b) The IR&D and B&P cost pools for a segment consist of the project costs plus allocable home office IR&D and B&P costs.

(c) When the costs of individual IR&D or B&P efforts are not material in amount, these costs may be accumulated in one or more project(s) within each of these two types of effort.

(d) The costs of any work performed by one segment for another segment shall not be treated as IR&D costs or B&P costs of the performing segment unless the work is a part of an IR&D or B&P project of the performing segment. If such work is part of a performing segment's IR&D or B&P project, the project will be transferred to the home office to be allocated in accordance with paragraph (e) of this subsection.

(e) The costs of IR&D and B&P projects accumulated at a home office shall be allocated to its segments as follows:

(1) Projects which can be identified with a specific segment(s) shall have their costs allocated to such segment(s).

(2) The costs of all other IR&D and B&P projects shall be allocated among all segments by means of the same base used by the company to allocate its residual expenses in accordance with 9904.403; provided, however, where a particular segment receives significantly more or less benefit from the IR&D or B&P costs than would be reflected by the allocation of such costs to the segment by the base, the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such segment commensurate with the benefits received. The amount of a special allocation to any segment made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to other segments and the base data of any such segment shall be excluded from the base used to allocate these pools.

(f) The costs of IR&D and B&P projects accumulated at a business unit shall be allocated to cost objectives as follows:

(1) Where costs of any IR&D or B&P project benefit more than one segment of the organization, the amounts to be allocated to each segment shall be determined in accordance with paragraph (e) of this subsection.

(2) The IR&D and B&P cost pools which are not allocated under subparagraph (f)(1) of this subsection, shall be allocated to all final cost objectives of the business unit by means of the same base used by the business unit to allocate its general and administrative expenses in accordance with 9904.410–50; provided, however, where a particular final cost objective receives significantly more or less benefit from IR&D or B&P cost than would be reflected by the allocation of such costs the Government and the contractor may agree to a special allocation of the IR&D or B&P costs to such final cost objective commensurate with the benefits received. The amount of special allocation to any such final cost objective made pursuant to such an agreement shall be excluded from the IR&D and B&P cost pools to be allocated to other final cost objectives and the particular final cost objective's base data shall be excluded from the base used to allocate these pools.

(g) Notwithstanding the provisions of paragraph (d), (e) or (f) of this subsection, the costs of IR&D and B&P projects allocable to a home office pursuant to 9904.420–50(d) may be allocated

directly to the receiving segments, provided that such allocation not be substantially different from the allocation that would be made if they were first passed through home office accounts.

9904.420–60 Illustrations.

(a) Business Unit A's engineering department in accordance with its established accounting practice, charges administrative effort including typing its overhead cost pool. In submitting a proposal, the engineering department assigns several typists to the proposal project on a full time basis and charges the typists' time directly to the proposal project, rather than to its overhead pool. Because the engineering department under its established accounting practice does not charge the cost of typing directly to final cost objectives, the direct charge does not meet with the requirements of 9904.420–50(a).

(b) Company B has five segments. The company undertakes an IR&D project which is part of IR&D plans of segments X, Y, and Z, and will be of general benefit to all five segments. The company designates Segment Z as the project leader in performing the project. In accumulating the costs, each segment allocates overhead to its part of the project but does not allocate segment G&A. The IR&D costs are then allocated to the home office by each segment. The costs are combined with other IR&D costs that benefit the company as a whole. The costs are allocated to all five segments by means of the same base by which the company allocates its residual home office expense costs of all segments. This practice meets the requirements of 9904.420–40(b), 9904.420–50(e)(2), and 9904.420–50(f)(1).

(c) Business Unit C normally accounts for its B&P effort by individual project. It accumulates directly allocated costs and departmental overhead costs by project. The business unit also submits large numbers of bids and proposals whose individual costs of preparation are not material in amount. The business unit collects the cost of these efforts under a single project. Since the cost of preparing each individual bid and proposal is not material, the practice of accumulating these costs in a single project meets the requirements of 9904.420–50(c).

(d) Segment D requests that Segment Y provide support for a Segment D IR&D project. The work being performed by Segment Y is similar in nature to Segment Y's normal product and is not part of its annual IR&D plan. Segment Y allocates to the project all costs it allocates to other final cost objectives, including G&A expense. Segment Y then directly transfers the cost of the project to Segment D in accordance with its normal intersegment transfer procedure. The accounting treatment meets the requirements of 9904.420–50(d) and 9904.410.

(e)(1) Contractor E has six operating segments and a research segment. The research segment performs work under:

(i) Research and development contracts,

(ii) Projects which are not part of its own IR&D plan but are specifically in support of other segments' IR&D projects, and

(iii) IR&D projects for the benefit of the company as a whole.

(2) The research segment directly allocates the cost of the projects in support of another segment's IR&D projects, including an allocation of its general and administrative expenses, to the receiving segment. This practice meets the requirements of 9904.420–50(d).

(3) The costs of the IR&D projects which benefit the company as a whole exclude any allocation of the research segment's general and administrative expenses and are transferred to the home office. The home office allocates these costs on the same base it uses to allocate its residual expenses to all seven segments. This practice meets the requirements of 9904.420–50 (e)(2) and (f)(1).

(f) Company F accumulates at the home office the costs of IR&D and B&P projects which generally benefit all segments of the company except Segment X. The company and the contracting officer agree that the nature of the business activity of Segment X is such that the home office IR&D and B&P effort is neither caused by nor provides any benefit to that segment. For the purpose of allocating its home

office residual expenses, the company uses a base as provided in 9904.403. For the purpose of allocating the home office IR&D and B&P costs, the company removes the data of Segment X from the base used for the allocation of its residual expenses. This practice meets the requirements of 9904.420–50(e)(2).

(g) Company G has 10 segments. Segment X performs IR&D projects, the results of which benefit it and two other segments but none of the other seven segments. The cost of those projects performed by Segment X are transferred to the home office and allocated to the three segments on the basis of the benefits received by the three segments. This practice meets the requirements of 9904.420–50(e)(1) and 9904.420–50(f)(1).

9904.420–61 Interpretation. [Reserved]

9904.420–62 Exemptions.

This Standard shall not apply to contracts and grants with State, local, and federally recognized Indian tribal governments.

9904.420–63 Effective date.

This Standard is effective as of April 17, 1992. Contractors with prior CAS-covered contracts with full coverage shall continue this Standard's applicability upon receipt of a contract to which this Standard is applicable. For contractors with no previous contracts subject to this Standard, this Standard shall be applied beginning with the contractor's second full fiscal year beginning after the receipt of a contract to which this Standard is applicable.

PART 9905—COST ACCOUNTING STANDARDS FOR EDUCATIONAL INSTITUTIONS

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9905.506–63 Effective date.

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9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.

9905.501–10 [Reserved]

9905.501–20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with

the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

9905.501–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *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.

(7) *Reporting costs* means the providing of cost information to others.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9905.501–40 Fundamental requirement.

(a) An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the institution's cost accounting practices used in accumulating and reporting costs.

(b) An educational institution's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with the institution's practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not *per se* be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this subsection when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

9905.501–50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect;

(2) The indirect cost pools to which each element of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9905.501–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of 9905.501–40(a) shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501–40(b), changes in established cost accounting practices during contract performance may be made in accordance with part 9903 (48 CFR part 9903).

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the contractor must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

9905.501–60 Illustration. [Reserved]

9905.501–61 Interpretation. [Reserved]

9905.501–62 Exemption.

None for this Standard.

9905.501–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.

9905.502–10 [Reserved]

9905.502–20 Purpose.

The purpose of this Standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a contract or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

9905.502–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *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.

(2) *Cost objective* means 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.

(3) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.502–40 Fundamental requirement.

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, 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. Further, 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.

9905.502–50 Techniques for application.

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by educational institutions as a condition of contracting as set forth in subpart 9903.2.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the educational institution's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

9905.502–60 Illustrations.

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new contract requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to contracts. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the contract, in addition to the directly allocated special test equipment costs, is not considered a violation of the Standard.

(2) An educational institution proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, it wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. The institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

9905.502–61 Interpretation.

(a) 9905.502, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in 9905.502–40, that ''*** 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.''

(b) This interpretation deals with the way 9905.502 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9905.502, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such a specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such

costs, of course, must provide an equitable distribution to all final cost objectives.

9905.502–62 Exemption.

None for this Standard.

9905.502–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.505 Accounting for unallowable costs—Educational institutions.

9905.505–10 [Reserved]

9905.505–20 Purpose.

(a)(1) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering:

(i) Identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and

(ii) The cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs.

(2) The Standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

9905.505–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *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.

(2) *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.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, 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.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9905.505–40 Fundamental requirement.

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of 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) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or

not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

9905.505–50 Techniques for application.

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b)(1) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include:

(i) The segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account,

(ii) The development and maintenance of separate accounting records or workpapers, or

(iii) The use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs.

(2) Educational institutions may satisfy the visibility requirements for estimated costs either:

(i) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or

(ii) By description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the Standard.

9905.505–60 Illustrations.

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the contracting officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., the institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the contracting officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of other indirect expenses, the educational institution must allocate the other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office Of Management and Budget Circular A–21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the contracting officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable contract costs, the educational institution identified and excluded the expressly unallowable GA&GE costs form the applicable indirect cost pools. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the contracting officer's authorized representatives, indirect cost rates were established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered contracts constitutes compliance with the Standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE), an indirect cost category, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A–21, and is separately identified by the educational institution. In these circumstances, the employee's travel and

subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

9905.505–61 Interpretation. [Reserved]

9905.505–62 Exemption.

None for this Standard.

9905.505–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.506 Cost accounting period—Educational institutions.

9905.506–10 [Reserved]

9905.506–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

9905.506–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *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.

(2) *Cost objective* means 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.

(3) *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.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this chapter 99 are applicable to this Standard: None.

9905.506–40 Fundamental requirement.

(a) Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9905.506–50(a).

(2) An annual period other than the fiscal year may, as provided in 9905.506–50(d), be used as the cost accounting period if its use is an established practice of the institution.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(b) An institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 9905.506–50(e).

9905.506–50 Techniques for application.

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is:

(1) Material in amount,

(2) Accumulated in a separate indirect cost pool or expense pool, and

(3) Allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 9905.506–40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the institution's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f)(1) When a transitional cost accounting period is required under the provisions of 9905.506–40(a)(3), the institution may select any one of the following:

(i) The period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period,

(ii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the previous cost accounting period, or

(iii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period.

(2) A change in the institution's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with subdivision (a)(4)(ii) or (iii) of the contract clause set out at 9903.201–4(e).

9905.506–60 Illustrations.

(a) An institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a covered contract, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) An institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) An institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional ''fiscal year.'' The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9905.506–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with subdivision (a)(4) (ii) or (iii) of the contract clause at 9903.201–4(e).

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a ''vacation year'' which ends September 30 each year. Vacation expenses are estimated uniformly during each ''vacation year.'' Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9905.506–50(b).

9905.506–61 Interpretation. [Reserved]

9905.506–62 Exemption.

None for this Standard.

9905.506–63 Effective date.

This Standard is effective as of January 9, 1995. For institutions with no previous CAS-covered contracts, this Standard shall be applied as of the start of its next fiscal year beginning after receipt of a contract to which this Standard is applicable.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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List of CFR Sections Affected

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2901.603–1 (a)(3) and (d)(8)(i) amended; (d)(4)(iii) and (9), (f)(2), and (g)(2) and (3) revised; interim 40372
2901.603–74 Added; interim 40373
2902 Authority citation revised 40373
2902.101 Amended; interim 40373
2903.204 (a) corrected; interim 40373
2905 Subchapter assignment; editorial note 6004
2905.202 (Subpart 2905.2) Added; interim 40374
2906 Added; interim 40374
2909.105–1 (b) revised; interim 40374
2913.403 Amended; interim 40374
2913.503–70 Corrected; interim 40374
2914 Heading revised; interim 40374
2914.404 Added; interim 40374
2914.404–1 Heading added; interim 40374
2914.407–8 Revised; interim 40374
2915.105 (Subpart 2915.1) Removed; interim 40374
2915.213—2915.270 (Subpart 2915.2) Removed; interim 40374
2915.304—2915.307 (Subpart 2915.3) Removed; interim 40374
2915.608 Added; interim 40374
2916.306 (Subpart 2916.3) Added; interim 40374
2917.502 Text added; interim 40374
2919.202–1 (a), (b), and (c) amended; interim 40375

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2933 Heading revised; interim 40375
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2933.003–70 Redesignated as 2933.203–70; interim 40375
2933.009 Redesignated as 2933.209; interim 40375
2933.011 Redesignated as 2933.211; interim 40375
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2933.102—2933.105 (Subpart 2933.1) Added; interim 40375
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2933.203 Redesignated from 2933.003 and (a) amended; interim 40375
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5252.243–9000 Added; interim 63675
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