AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SUBCHAPTER A—GENERAL

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

Sec.
1.000 Scope of part.

Subpart 1.1—Purpose, Authority, Issuance

1.101 Purpose.
1.102 Statement of guiding principles for the Federal Acquisition System.
1.102–1 Discussion.
1.102–2 Performance standards.
1.102–3 Acquisition team.
1.102–4 Role of the acquisition team.
1.103 Authority.
1.104 Applicability.
1.105 Issuance.
1.105–1 Publication and code arrangement.
1.105–2 Arrangement of regulations.
1.105–3 Copies.
1.106 OMB approval under the Paperwork Reduction Act.
1.107 Certifications.
1.108 FAR conventions.

Subpart 1.2—Administration

1.201 Maintenance of the FAR.
1.201–1 The two councils.
1.201–2 FAR Secretariat.
1.202 Agency compliance with the FAR.

Subpart 1.3—Agency Acquisition Regulations

1.301 Policy.
1.302 Limitations.
1.303 Publication and codification.
1.304 Agency control and compliance procedures.

Subpart 1.4—Deviations from the FAR

1.400 Scope of subpart.
1.401 Definition.
1.402 Policy.
1.403 Individual deviations.
1.404 Class deviations.
1.405 Deviations pertaining to treaties and executive agreements.

Subpart 1.5—Agency and Public Participation

1.501 Solicitation of agency and public views.
1.501–1 Definition.
1.501–2 Opportunity for public comments.
1.501–3 Exceptions.
1.502 Unsolicited proposed revisions.
1.503 Public meetings.

Subpart 1.6—Career Development, Contracting Authority, and Responsibilities

1.601 General.
1.602 Contracting officers.
1.602–1 Authority.
1.602–2 Responsibilities.
1.602–3 Ratification of unauthorized commitments.
1.603 Selection, appointment, and termination of appointment.
1.603–1 General.
1.603–2 Selection.
1.603–3 Appointment.
1.603–4 Termination.

Subpart 1.7—Determinations and Findings

1.700 Scope of subpart.
1.701 Definition.
1.702 General.
1.703 Class determinations and findings.
1.704 Content.
1.705 Supersession and modification.
1.706 Expiration.
1.707 Signatory authority.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42103, Sept. 19, 1983, unless otherwise noted.

1.000 Scope of part.

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

Subpart 1.1—Purpose, Authority, Issuance

1.101 Purpose.

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the

FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).

[48 FR 42103, Sept. 19, 1983, as amended at 51 FR 27116, July 29, 1986]

1.102 Statement of guiding principles for the Federal Acquisition System.

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

(b) The Federal Acquisition System will—

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

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

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

(iii) Promoting competition;

(2) Minimize administrative operating costs;

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

(4) Fulfill public policy objectives.

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

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

[60 FR 34733, July 3, 1995]

1.102–1 Discussion.

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

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

[60 FR 34733, July 3, 1995]

1.102–2 Performance standards.

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

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

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

(4) The Government must not hesitate to communicate with the commercial sector as early as possible in the

acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. The Government will maximize its use of commercial products and services in meeting Government requirements.

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

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

(7) All members of the Team are required to employ planning as an integral part of the overall process of acquiring products or services. Although advance planning is required, each member of the Team must be flexible in order to accommodate changing or unforeseen mission needs. Planning is a tool for the accomplishment of tasks, and application of its discipline should be commensurate with the size and nature of a given task.

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

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

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

(2) To achieve efficient operations, the System must shift its focus from ''risk avoidance'' to one of ''risk management.'' The cost to the taxpayer of attempting to eliminate all risk is prohibitive. The Executive Branch will accept and manage the risk associated with empowering local procurement officials to take independent action based on their professional judgment.

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

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

[60 FR 34734, July 3, 1995, as amended at 62 FR 51229, Sept. 30, 1997]

1.102–3 Acquisition team.

The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified—beginning with the customer and ending with the contractor of the product or service. By identifying the team members in this manner, teamwork, unity of purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

[60 FR 34734, July 3, 1995]

1.102–4 Role of the acquisition team.

(a) Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the Guiding

Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

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

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

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

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

[60 FR 34734, July 3, 1995, as amended at 62 FR 44804, Aug. 22, 1997]

1.103 Authority.

(a) The development of the FAR System is in accordance with the requirements of the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93–400), as amended by Pub. L. 96–83.

(b) The FAR is prepared, issued, and maintained, and the FAR System is prescribed, jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities.

[48 FR 42103, Sept. 19, 1983, as amended at 51 FR 27116, July 29, 1986. Redesignated at 60 FR 34733, July 3, 1995, as amended at 65 FR 36014, June 6, 2000]

1.104 Applicability.

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

[48 FR 42103, Sept. 19, 1983. Redesignated at 60 FR 34733, July 3, 1995]

1.105 Issuance.

1.105–1 Publication and code arrangement.

(a) The FAR is published in (1) the daily issue of the Federal Register, (2) cumulated form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (e.g., part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

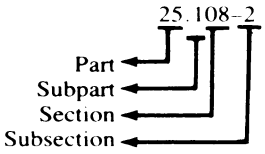
[48 FR 42103, Sept. 19, 1983. Redesignated at 60 FR 34733, July 3, 1995]

1.105–2 Arrangement of regulations.

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

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the

left of the dash, represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisons may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence: (a)(1)(i)(A)(*1*)(*i*).

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

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

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

(i) Part would be ''FAR Part 9'' outside the FAR and ''Part 9'' within the FAR.

(ii) Subpart would be ''FAR Subpart 9.1'' outside the FAR and ''Subpart 9.1'' within the FAR.

(iii) Section would be ''FAR 9.106'' outside the FAR and ''9.106'' within the FAR.

(iv) Subsection would be ''FAR 9.106–4'' outside the FAR and ''9.106–4'' within the FAR.

(v) Paragraph would be ''FAR 9.106–4(d)'' outside the FAR and ''9.106–4(d)'' within the FAR.

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

[48 FR 42103, Sept. 19, 1983. Redesignated at 60 FR 34733, July 3, 1995, as amended at 65 FR 36015, June 6, 2000]

1.105–3 Copies.

Copies of the FAR in Federal Register, loose-leaf, CD–ROM and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

[48 FR 42103, Sept. 19, 1983. Redesignated at 60 FR 34733, July 3, 1995, as amended at 62 FR 40236, July 25, 1997]

1.106 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 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB control No.
3.103	9000–0018
3.4	9000–0003
4.102	9000–0033
4.7	9000–0034
4.9	9000–0097
4.602	9000–0145
4.603	9000–0145
5.405	9000–0036
7.2	9000–0082
8.5	9000–0113
9.1	9000–0011
9.2	9000–0020
14.201	9000–0034
14.202–4	9000–0040
14.202–5	9000–0039
14.205	9000–0037
14.214	9000–0105
14.407	9000–0038
14.5	9000–0041
15.2	9000–0037
15.209	9000–0034
15.4	9000–0013
15.404–1(f)	9000–0080
15.407–2	9000–0078
15.408	9000–0115
19.7	9000–0006
19.12	9000–0150
22.103	9000–0065
22.8	1215–0072
22.11	9000–0066
22.13	1215–0072
22.14	1215–0072
23.9	9000–0139
23.602	9000–0107
27.3	9000–0095
27.4	9000–0090
28.1	9000–0045
28.2	9000–0045
29.304	9000–0059
30.6	9000–0129
31.205–46	9000–0079

FAR segment	OMB control No.
31.205–46(a)(3)	9000–0088
32	9000–0035
32.000	9000–0138
32.1	9000–0070 and 9000–0138
32.2	9000–0138
32.4	9000–0073
32.5	9000–0010 and 9000–0138
32.7	9000–0074
32.9	9000–0102
32.10	9000–0138
33	9000–0035
34.1	9000–0132
36.213–2	9000–0037
36.603	9000–0004 and 9000–0005
36.701	9000–0037
41.202(c)	9000–0125
42.7	9000–0013
42.12	9000–0076
42.13	9000–0076
42.14	9000–0056
43.205(f)	9000–0026
45	9000–0075
46	9000–0077
47	9000–0061
48	9000–0027
49	9000–0028
50	9000–0029
51.1	9000–0031
51.2	9000–0032
52.203–2	9000–0018
52.203–7	9000–0091
52.204–3	9000–0097
52.204–6	9000–0145
52.204–7	9000–0159
52.207–3	9000–0114
52.212–1(k)	9000–0159
52.212–3	9000–0136
52.212–4(t)	9000–0159
52.214–14	9000–0047
52.214–15	9000–0044
52.214–16	9000–0044
52.214–21	9000–0039
52.214–26	9000–0034
52.214–28	9000–0013
52.215–1(c)(2)(iv)	9000–0048
52.215–1(d)	9000–0044
52.215–2	9000–0034
52.215–6	9000–0047
52.215–9	9000–0078
52.215–12	9000–0013
52.215–13	9000–0013
52.215–14	9000–0080
52.215–19	9000–0115
52.215–20	9000–0013
52.215–21	9000–0013
52.216–2	9000–0068
52.216–3	9000–0068
52.216–4	9000–0068
52.216–5	9000–0071
52.216–6	9000–0071
52.216–7	9000–0069
52.216–10	9000–0067
52.216–13	9000–0069
52.216–15	9000–0069
52.216–16	9000–0067
52.216–17	9000–0067
52.219–9	9000–0006
52.219–10	9000–0006
52.219–19	9000–0100
52.219–20	9000–0100
52.219–21	9000–0100
52.219–22	9000–0150
52.219–23	9000–0150
52.219–25	9000–0150
52.222–2	9000–0065
52.222–4	1215–0119
52.222–6	1215–0140
52.222–8	1215–0149 and 1215–0017
52.222–11	9000–0014
52.222–18	9000–0127
52.222–21	1215–0072
52.222–22	1215–0072
52.222–23	1215–0072
52.222–25	1215–0072
52.222–26	1215–0072
52.222–27	1215–0072
52.222–32	9000–0154
52.222–35	1215–0072
52.222–36	1215–0072
52.222–41	1215–0017 and 1215–0150
52.222–46	9000–0066
52.223–4	9000–0134
52.223–5	9000–0147
52.223–6(b)(5)	9000–0101
52.233–7	9000–0117
52.223–9	9000–0134
52.223–13	9000–0139
52.223–14	9000–0139
52.225–2	9000–0023 and 9000–0024
52.225–4	9000–0130
52.225–6	9000–0025
52.225–8	9000–0022
52.225–9	9000–0141
52.225–11	9000–0141
52.227–14	9000–0090
52.227–15	9000–0090
52.227–16	9000–0090
52.227–17	9000–0090
52.227–18	9000–0090
52.227–19	9000–0090
52.227–20	9000–0090
52.227–21	9000–0090
52.227–22	9000–0090
52.227–23	9000–0090
52.228–1	9000–0045
52.228–2	9000–0045
52.228–12	9000–0135
52.228–13	9000–0045
52.228–15	9000–0045
52.228–16	9000–0045
52.229–2	9000–0059
52.230–6	9000–0129
52.232–1	9000–0070
52.232–2	9000–0070
52.232–3	9000–0070
52.232–4	9000–0070
52.232–5	9000–0070
52.232–6	9000–0070
52.232–7	9000–0070
52.232–8	9000–0070
52.232–9	9000–0070
52.232–10	9000–0070
52.232–11	9000–0070
52.232–12	9000–0073

FAR segment	OMB control No.
52.232–13	9000–0010
52.232–14	9000–0010
52.232–15	9000–0010
52.232–16	9000–0010
52.232–20	9000–0074
52.232–21	9000–0074
52.232–22	9000–0074
52.232–27	9000–0102
52.232–29	9000–0138
52.232–30	9000–0138
52.232–31	9000–0138
52.232–32	9000–0138
52.233–1	9000–0035
52.234–1	9000–0133
52.236–5	9000–0062
52.236–13	1220–0029 and 9000–0060
52.236–15	9000–0058
52.236–19	9000–0064
52.241–1	9000–0126
52.241–3	9000–0122
52.241–7	9000–0123
52.241–13	9000–0124
52.242–12	9000–0056
52.243–1	9000–0026
52.243–2	9000–0026
52.243–3	9000–0026
52.243–4	9000–0026
52.243–6	9000–0026
52.243–7	9000–0026
52.245–2	9000–0075
52.245–3	9000–0075
52.245–5	9000–0075
52.245–7	9000–0075
52.245–8	9000–0075
52.245–9	9000–0075
52.245–10	9000–0075
52.245–11	9000–0075
52.245–16	9000–0075
52.245–17	9000–0075
52.245–18	9000–0075
52.246–2	9000–0077
52.246–3	9000–0077
52.246–4	9000–0077
52.246–5	9000–0077
52.246–6	9000–0077
52.246–7	9000–0077
52.246–8	9000–0077
52.246–10	9000–0077
52.246–12	9000–0077
52.246–15	9000–0077
52.247–2	9000–0053
52.247–29	9000–0061
52.247–30	9000–0061
52.247–31	9000–0061
52.247–32	9000–0061
52.247–33	9000–0061
52.247–34	9000–0061
52.247–35	9000–0061
52.247–36	9000–0061
52.247–37	9000–0061
52.247–38	9000–0061
52.247–39	9000–0061
52.247–40	9000–0061
52.247–41	9000–0061
52.247–42	9000–0061
52.247–43	9000–0061
52.247–44	9000–0061
52.247–48	9000–0061
52.247–51	9000–0057
52.247–53	9000–0055
52.247–57	9000–0061
52.247–63	9000–0054
52.247–64	9000–0061
52.248–1	9000–0027
52.248–2	9000–0027
52.248–3	9000–0027
52.249–2	9000–0028
52.249–3	9000–0028
52.249–5	9000–0028
52.249–6	9000–0028
52.249–11	9000–0028
52.250–1	9000–0029
53.236–1(a)	9000–0037
SF 24	9000–0045
SF 25	9000–0045
SF 25–A	9000–0045
SF 28	9000–0001
SF 34	9000–0045
SF 35	9000–0045
SF 254	9000–0004
SF 255	9000–0005
SF 273	9000–0045
SF 274	9000–0045
SF 275	9000–0045
SF 294	9000–0006
SF 295	9000–0007
SF 312	9000–0150
SF 1403	9000–0011
SF 1404	9000–0011
SF 1405	9000–0011
SF 1406	9000–0011
SF 1407	9000–0011
SF 1408	9000–0011
SF 1413	9000–0014
SF 1416	9000–0045
SF 1417	9000–0037
SF 1418	9000–0045
SF 1423	9000–0015
SF 1424	9000–0015
SF 1426	9000–0015
SF 1427	9000–0015
SF 1428	9000–0015
SF 1429	9000–0015
SF 1430	9000–0015
SF 1431	9000–0015
SF 1432	9000–0015
SF 1433	9000–0015
SF 1434	9000–0015
SF 1435	9000–0012
SF 1436	9000–0012
SF 1437	9000–0012
SF 1438	9000–0012
SF 1439	9000–0012
SF 1440	9000–0012
SF 1443	9000–0010
SF 1444	9000–0089
SF 1445	9000–0089
SF 1446	9000–0089

[59 FR 67065, Dec. 28, 1994. Redesignated at 60 FR 34733, 34736, July 3, 1995, as amended at 60 FR 42650, 42665, Aug. 16, 1995; 60 FR 48211, Sept. 18, 1995; 60 FR 49710, Sept. 26, 1995; 61 FR 18916, Apr. 29, 1996; 61 FR 39188, July 26, 1996; 61 FR 67410, 67430, Dec. 20, 1996; 61 FR 69287, Dec. 31, 1996; 62 FR 227, 235, 271, Jan. 2, 1997; 62 FR 44806, 44810, Aug. 22, 1997; 62 FR 51229, 51270, Sept. 30, 1997; 63 FR 9050, 9051, Feb. 23, 1998; 63 FR 35720, June 30, 1998; 63 FR 36121, July 1, 1998; 63 FR 58602, Oct. 30, 1998; 63 FR 70292, Dec. 18, 1998; 64 FR 10532, 10549, Mar. 4, 1999; 64 FR 32748, June 17, 1999; 64 FR 51850, Sept. 24, 1999; 64 FR 72416, 72417, Dec. 27, 1999; 65 FR 16286, Mar. 27, 2000; 66 FR 53480, Oct. 22, 2001; 67 FR 13050, Mar. 20, 2002; 68 FR 43856, July 24, 2003; 68 FR 56672, Oct. 1, 2003]

1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104–106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

[62 FR 44813, Aug. 22, 1997]

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

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

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

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

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

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

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

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

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

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

[65 FR 36015, June 6, 2000]

Subpart 1.2—Administration

1.201 Maintenance of the FAR.

1.201–1 The two councils.

(a) Subject to the authorities discussed in 1.103, revisions to the FAR will be prepared and issued through the coordinated action of two councils, the Defense Acquisition Regulations Council (DAR Council) and the Civilian Agency Acquisition Council (CAA Council). Members of these councils shall—

(1) Represent their agencies on a full-time basis;

(2) Be selected for their superior qualifications in terms of acquisition experience and demonstrated professional expertise; and

(3) Be funded by their respective agencies.

(b) The chairperson of the CAA Council shall be the representative of the Administrator of General Services. The other members of this council shall be one each representative from the (1) Departments of Agriculture, Commerce, Energy, Health and Human Services, Interior, Labor, State, Transportation, and Treasury, and (2) Environmental Protection Agency, Social Security Administration, Small Business Administration, and Department of Veterans Affairs.

(c) The Director of the DAR Council shall be the representative of the Secretary of Defense. The operation of the DAR Council will be as prescribed by the Secretary of Defense. Membership shall include representatives of the military Departments, the Defense Logistics Agency, and the National Aeronautics and Space Administration.

(d) Responsibility for processing revisions to the FAR is apportioned by the two councils so that each council has cognizance over specified parts or subparts.

(e) Each council shall be responsible for—

(1) Agreeing on all revisions with the other council;

(2) Submitting to the FAR Secretariat (see 1.201–2) the information required under paragraphs 1.501–2(b) and (e) for publication in the FEDERAL REGISTER of a notice soliciting comments on a proposed revision to the FAR;

(3) Considering all comments received in response to notice of proposed revisions;

(4) Arranging for public meetings;

(5) Preparing any final revision in the appropriate FAR format and language; and

(6) Submitting any final revision to the FAR Secretariat for publication in the FEDERAL REGISTER and printing for distribution.

[48 FR 42103, Sept. 19, 1983, as amended at 50 FR 2269, Jan. 15, 1985; 50 FR 26903, June 28, 1985; 51 FR 2649, Jan. 17, 1986; 54 FR 29280, July 11, 1989; 62 FR 64940, Dec. 9, 1997; 63 FR 9069, Feb. 23, 1998; 65 FR 16286, Mar. 27, 2000]

1.201–2 FAR Secretariat.

(a) The General Services Administration is responsible for establishing and operating the FAR Secretariat to print, publish, and distribute the FAR through the Code of Federal Regulations system (including a loose-leaf edition with periodic updates).

(b) Additionally, the FAR Secretariat shall provide the two councils with centralized services for—

(1) Keeping a synopsis of current FAR cases and their status;

(2) Maintaining official files;

(3) Assisting parties interested in reviewing the files on completed cases; and

(4) Performing miscellaneous administrative tasks pertaining to the maintenance of the FAR.

[48 FR 42103, Sept. 19, 1983, as amended at 62 FR 40236, July 25, 1997]

1.202 Agency compliance with the FAR.

Agency compliance with the FAR (see 1.304) is the responsibility of the Secretary of Defense (for the military departments and defense agencies), the Administrator of General Services (for civilian agencies other than NASA), and the Administrator of NASA (for NASA activities).

Subpart 1.3—Agency Acquisition Regulations

1.301 Policy.

(a)(1) Subject to the authorities in paragraph (c) below and other statutory authority, an agency head may issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors.

(2) Subject to the authorities in (c) below and other statutory authority, an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (e.g., designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).

(b) Agency heads shall establish procedures to ensure that agency acquisition regulations are published for comment in the FEDERAL REGISTER in conformance with the procedures in subpart 1.5 and as required by section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and other applicable statutes, when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. However, publication is not required for issuances that merely implement or supplement higher level issuances that have previously undergone the public comment process, unless such implementation or supplementation results in an additional significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. Issuances under 1.301(a)(2) need not be publicized for public comment.

(c) When adopting acquisition regulations, agencies shall ensure that they comply with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) as implemented in 5 CFR part 1320 (see 1.105) and the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Normally, when a law requires publication of a proposed regulation, the Regulatory Flexibility Act applies and agencies must prepare written analyses or certifications as provided in the law.

(d) Agency acquisition regulations implementing or supplementing the FAR are, for—

(1) The military departments and defense agencies, issued subject to the authority of the Secretary of Defense;

(2) NASA activities, issued subject to the authorities of the Administrator of NASA; and

(3) The civilian agencies other than NASA, issued by the heads of those agencies subject to the overall authority of the Administrator of General Services or independent authority the agency may have.

[48 FR 42103, Sept. 19, 1983, as amended at 50 FR 2269, Jan. 15, 1985; 54 FR 5054, Jan. 31, 1989]

1.302 Limitations.

Agency acquisition regulations shall be limited to—

(a) Those necessary to implement FAR policies and procedures within the agency; and

(b) Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

1.303 Publication and codification.

(a) Agency-wide acquisition regulations shall be published in the FEDERAL REGISTER as required by law, shall be codified under an assigned chapter in Title 48, Code of Federal Regulations, and shall parallel the FAR in format, arrangement, and numbering system (but see 1.104–1(c)). Coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the appropriate FAR number and title. Supplementary material for which there is no counterpart in the FAR shall be codified using chapter, part, subpart, section, or subsection numbers of 70 and up (e.g., for the Department of Interior, whose assigned chapter number in Title 48 is 14, part 1470, subpart 1401.70, section 1401.370, or subsection 1401.301–70.)

(b) Issuances under 1.301(a)(2) need not be published in the FEDERAL REGISTER.

[48 FR 42103, Sept. 19, 1983, as amended at 50 FR 2269, Jan. 15, 1985]

1.304 Agency control and compliance procedures.

(a) Under the authorities of 1.301(d), agencies shall control and limit issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR, and shall establish formal procedures for the review of these documents to assure compliance with this part 1.

(b) Agency acquisition regulations shall not—

(1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations; or

(2) Except as required by law or as provided in subpart 1.4, conflict or be inconsistent with FAR content.

(c) Agencies shall evaluate all regulatory coverage in agency acquisition regulations to determine if it could apply to other agencies. Coverage that is not peculiar to one agency shall be recommended for inclusion in the FAR.

[48 FR 42103, Sept. 19, 1983, as amended at 61 FR 39190, July 26, 1996; 65 FR 16286, Mar. 27, 2000]

Subpart 1.4—Deviations from the FAR

1.400 Scope of subpart.

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

1.401 Definition.

Deviation means any one or combination of the following:

(a) The issuance or use of a policy, procedure, solicitation provision (see definition in 2.101), contract clause (see definition in 2.101), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.

(b) The omission of any solicitation provision or contract clause when its prescription requires its use.

(c) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the FAR (see definition of ''modification'' in 52.101(a) and definition of ''alternate'' in 2.101(a)).

(d) The use of a solicitation provision or contract clause prescribed by the FAR on a *substantially as follows* or *substantially the same as* basis (see definitions in 2.101 and 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the FAR.

(e) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the FAR.

(f) The issuance of policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into agency acquisition regulations in accordance with 1.301(a).

[48 FR 42103, Sept. 19, 1983, as amended at 66 FR 2118, Jan. 10, 2001]

1.402 Policy.

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

[48 FR 42103, Sept. 19, 1983, as amended at 52 FR 35612, Sept. 22, 1987; 62 FR 64914, Dec. 9, 1997]

1.403 Individual deviations.

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

[67 FR 13053, Mar. 20, 2002]

1.404 Class deviations.

Class deviations affect more than one contract action. When an agency knows that it will require a class deviation on a permanent basis, it should propose a FAR revision, if appropriate. Civilian agencies, other than NASA, must furnish a copy of each approved class deviation to the FAR Secretariat.

(a) For civilian agencies except NASA, class deviations may be authorized by agency heads or their designees, unless 1.405(e) is applicable. Delegation of this authority shall not be made below the head of a contracting activity. Authorization of class deviations by agency officials is subject to the following limitations:

(1) An agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless that agency official determines that urgency precludes such consultation.

(2) Recommended revisions to the FAR shall be transmitted to the FAR Secretariat by agency heads or their designees for authorizing class deviations.

(b) For DOD, class deviations shall be controlled, processed, and approved in accordance with the Defense FAR Supplement.

(c) For NASA, class deviations shall be controlled and approved by the Assistant Administrator for Procurement. Deviations shall be processed in accordance with agency regulations.

[48 FR 42103, Sept. 19, 1983, as amended at 56 FR 15148, Apr. 15, 1991; 59 FR 11387, March 10, 1994; 61 FR 67411, Dec. 20, 1996; 67 FR 13053, 13068, Mar. 20, 2002]

1.405 Deviations pertaining to treaties and executive agreements.

(a) *Executive agreements,* as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the United States is a party.

(b) Any deviation from the FAR required to comply with a treaty to which the United States is a party is authorized, unless the deviation would be inconsistent with FAR coverage based on a law enacted after the execution of the treaty.

(c) Any deviation from the FAR required to comply with an executive agreement is authorized unless the deviation would be inconsistent with FAR coverage based on law.

(d) For civilian agencies other than NASA, a copy of the text deviation authorized under paragraph (b) or (c) of this section shall be transmitted to the FAR Secretariat through a central agency control point.

(e) For civilian agencies other than NASA, if a deviation required to comply with a treaty or an executive agreement is not authorized by paragraph (b) or (c) of this section, then the request for deviation shall be processed through the FAR Secretariat to the Civilian Agency Acquisition Council.

[48 FR 42103, Sept. 19, 1983, as amended at 61 FR 67411, Dec. 20, 1996]

Subpart 1.5—Agency and Public Participation

SOURCE: 50 FR 2269, Jan. 15, 1985, unless otherwise noted.

1.501 Solicitation of agency and public views.

1.501–1 Definition.

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

1.501–2 Opportunity for public comments.

(a) Views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and procedures.

(b) The opportunity to submit written comments on proposed significant revisions shall be provided by placing a notice in the FEDERAL REGISTER. Each of these notices shall include—

(1) The text of the revision or, if it is impracticable to publish the full text, a summary of the proposal;

(2) The address and telephone number of the individual from whom copies of the revision, in full text, can be requested and to whom comments thereon should be addressed; and

(3) When 1.501–3(b) is applicable, a statement that the revision is effective on a temporary basis pending completion of the public comment period.

(c) A minimum of 30 days and, normally, at least 60 days will be given for the receipt of comments.

1.501–3 Exceptions.

(a) Comments need not be solicited when the proposed coverage does not constitute a significant revision.

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

1.502 Unsolicited proposed revisions.

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

1.503 Public meetings.

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

Subpart 1.6—Career Development, Contracting Authority, and Responsibilities

1.601 General.

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

(b) Agency heads may mutually agree to—

(1) Assign contracting functions and responsibilities from one agency to another; and

(2) Create joint or combined offices to exercise acquisition functions and responsibilities.

[60 FR 49721, Sept. 26, 1995]

1.602 Contracting officers.

1.602–1 Authority.

(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603–1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

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

1.602–2 Responsibilities.

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

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

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

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

1.602–3 Ratification of unauthorized commitments.

(a) *Definitions.*

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

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

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

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) The ratification authority in subparagraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

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

(5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with subpart 33.2, Disputes and Appeals.

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

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

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

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

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

(5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;

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

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

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

[53 FR 3689, Feb. 8, 1988, as amended at 60 FR 48225, Sept. 18, 1995]

1.603 Selection, appointment, and termination of appointment.

1.603–1 General.

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

[59 FR 67015, Dec. 28, 1994]

1.603–2 Selection.

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

(a) Experience in Government contracting and administration, commercial purchasing, or related fields;

(b) Education or special training in business administration, law, accounting, engineering, or related fields;

(c) Knowledge of acquisition policies and procedures, including this and other applicable regulations;

(d) Specialized knowledge in the particular assigned field of contracting; and

(e) Satisfactory completion of acquisition training courses.

1.603–3 Appointment.

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

(b) Agency heads are encouraged to delegate micro-purchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an SF 1402, but shall be appointed in writing in accordance with agency procedures.

[61 FR 39190, July 26, 1996]

1.603–4 Termination.

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

Subpart 1.7—Determinations and Findings

SOURCE: 50 FR 1726, Jan. 11, 1985 (interim rule), and 50 FR 52429, Dec. 23, 1985 (final rule), unless otherwise noted.

1.700 Scope of subpart.

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

1.701 Definition.

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

[50 FR 1726, Jan. 11, 1985 (interim rule), and 50 FR 52429, Dec. 23, 1985 (final rule), as amended at 67 FR 13053, Mar. 20, 2002]

1.702 General.

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

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

1.703 Class determinations and findings.

(a) A class D&F provides authority for a class of contract actions. A class may consist of contract actions for the same or related supplies or services or

other contract actions that require essentially identical justification.

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

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

[50 FR 1726, Jan. 11, 1985 (interim rule), and 50 FR 52429, Dec. 23, 1985 (final rule), as amended at 67 FR 13053, Mar. 20, 2002]

1.704 Content.

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

(a) Identification of the agency and of the contracting activity and specific identifications of the document as a *Determination and Findings.*

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

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

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

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

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

(g) The signature of the official authorized to sign the D&F (see 1.706) and the date signed.

1.705 Supersession and modification.

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

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

[50 FR 1726, Jan. 11, 1985 (interim rule), and 50 FR 52429, Dec. 23, 1985 (final rule), as amended at 67 FR 13053, Mar. 20, 2002]

1.706 Expiration.

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

1.707 Signatory authority.

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

PART 2—DEFINITIONS OF WORDS AND TERMS

Sec.

2.000 Scope of part.

Subpart 2.1—Definitions

2.101 Definitions.

Subpart 2.2—Definitions Clause

2.201 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42107, Sept. 19, 1983, unless otherwise noted.

2.000 Scope of part.

(a) This part—

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

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

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

(b) Other parts, subparts, and sections of this regulation (48 CFR chapter 1) may define other words or terms and those definitions only apply to the part, subpart, or section where the word or term is defined (see the Index for locations).

[66 FR 2118, Jan. 10, 2001]

Subpart 2.1—Definitions

2.101 Definitions.

(a) A word or a term, defined in this section, has the same meaning throughout this regulation (48 CFR chapter 1), unless—

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

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

(b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of this regulation (48 CFR chapter 1, the definition in—

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

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

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

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

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

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

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

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

methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.,* contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505–1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A–109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

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

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

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

Agency head or *head of the agency* means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.

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

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

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

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

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

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

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

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

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

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

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

Bundling means—

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

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

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

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

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

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

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

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

Central Contractor Registration (CCR) database means the primary Government repository for contractor information required for the conduct of business with the Government.

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

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

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

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

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

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

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

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

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

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

Commercial component means any component that is a commercial item.

Commercial item means—

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

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

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

(2) Any item that evolved from an item described in paragraph (1) of this

definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Computer software means computer programs, computer data bases, and related documentation.

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

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms ''buildings, structures, or other real property'' include, but are not limited to, improvements of all types, such as

bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

Contiguous United States (CONUS) means the 48 contiguous States and the District of Columbia.

Contingency operation (10 U.S.C. 101(a)(13)) means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of 10 U.S.C., chapter 15 of 10 U.S.C, or any other provision of law during a war or during a national emergency declared by the President or Congress.

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

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

Contract administration office means an office that performs—

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

(2) Assigned preaward functions.

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

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

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

Contracting activity means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

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

Contracting officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. ''Administrative contracting officer (ACO)'' refers to a contracting officer who is administering contracts. ''Termination contracting officer (TCO)'' refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR chapter 1) to administrative contracting officer or termination contracting officer does not—

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

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

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

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

(1) Vendor quotations;

(2) Nonrecurring costs;

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

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

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

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

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

Cost realism means that the costs in an offeror's proposal—

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

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

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

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

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities.

Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (*see* subpart 32.11) for the same concern.

Day means, unless otherwise specified, a calendar day.

Debarment means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is ''debarred.''

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

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

Design-to-cost means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline

throughout the acquisition and operation of the system or equipment.

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

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

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

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

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

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

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

Energy-efficient product means a product that—

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

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

Energy-efficient standby power devices means products that use—

(1) External standby power devices, or that contain an internal standby power function; and

(2) No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

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

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

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

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

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

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

Facilities capital cost of money means ''cost of money as an element of the cost of facilities capital'' as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

Facsimile means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; *e.g.*, facsimile bid, the terms refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

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

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

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

(1) A long-term relationship is contemplated;

(2) Most or all of the facilities are owned or funded by the Government; and

(3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

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

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

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

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

(1) The responsibility and basis for payment of freight charges; and

(2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

F.o.b. destination means free on board at destination; *i.e.*, the seller or consignor delivers the goods on seller's or consignor's conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss. For use in the clause at 52.247–34, see the definition at 52.247–34(a).

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

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

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

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

Freight means supplies, goods, and transportable property.

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

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

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

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

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by the Brooks Act, 40 U.S.C. 759 (repealed by Public Law 104–106). The Economy Act does not apply to orders under a Governmentwide acquisition contract.

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

Head of the agency (see ''agency head'').

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

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

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

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

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 2302(8) and 41 U.S.C. 259(d)).

In writing, writing, or *written* means any worded or numbered expression that can be read, reproduced, and later

communicated, and includes electronically transmitted and stored information.

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

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

Ineligible means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation (48 CFR chapter 1) and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

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

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

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

(i) Its use; or

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

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

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

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

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

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

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

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

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or

criminal judicial proceedings, contract management, or otherwise;

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

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

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

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

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

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

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

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

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

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

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

List of Parties Excluded from Federal Procurement and Nonprocurement Programs means a list compiled, maintained, and distributed by the General Services Administration containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

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

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

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed

$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a ''major system'' established by the agency pursuant to Office of Management and Budget Circular A–109, entitled ''Major System Acquisitions,'' whichever is greater; or

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

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

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

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

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

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

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

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

(2) $7,500 for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107–296, Sec. 2) or nuclear, biological, chemical, or radiological attack, as described in 13.201(g)(1)(i), except for construction subject to the Davis Bacon Act (Public Law 107–296, Sec. 854). The threshold is $15,000 for acquisitions by or for the Department of Defense as described in 13.201(g)(1)(ii) (Public Law 107–107, Sec. 836(a)(1)(A)).

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

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

Must (see ''shall'').

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

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

Nondevelopmental item means—

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

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

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

Novation agreement means a legal instrument—

(1) Executed by the—

(i) Contractor (transferor);

(ii) Successor in interest (transferee); and

(iii) Government; and

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

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

Offeror means offeror or bidder.

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

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

Outlying areas means—

(1) *Commonwealths.* (i) Puerto Rico.

(ii) The Northern Mariana Islands;

(2) *Territories.* (i) American Samoa.

(ii) Guam.

(iii) U.S. Virgin Islands; and

(3) *Minor outlying islands.* (i) Baker Island.

(ii) Howland Island.

(iii) Jarvis Island.

(iv) Johnston Atoll.

(v) Kingman Reef.

(vi) Midway Islands.

(vii) Navassa Island.

(viii) Palmyra Atoll.

(ix) Wake Atoll.

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

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

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

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

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

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

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

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

Pollution prevention means any practice that—

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

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

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

(3) Protects natural resources by conservation.

Power of attorney means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the

power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also ''attorney-in-fact'' at 28.001).

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

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

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

Procurement (see ''acquisition'').

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

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

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

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

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

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

Receiving report means written evidence that indicates Government acceptance of supplies delivered or services performed (see subpart 46.6). Receiving reports must meet the requirements of 32.905(c).

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

Registered in the CCR database means that—

(1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated mandatory data fields and has marked the record ''Active''.

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

Renewable energy technology means—

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

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

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

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

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

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

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

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

(i) A majority ownership; or

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

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

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

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

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

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

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

Shall denotes the imperative.

Shipment means freight transported or to be transported.

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

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

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

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

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

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

Simplified acquisition threshold means $100,000, except that—

(1) In the case of any contract to be awarded and performed, or purchase to be made outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means $200,000; or

(2) For acquisitions of supplies or services that, as determined by the head of the agency are to be used to facilitate defense against or recovery from terrorism (defined at Public Law 107–296, Sec. 2) or nuclear, biological, chemical, or radiological attack—

(i) For any agency, in support of a humanitarian or peacekeeping or a contingency operation if initiated by a solicitation issued from January 24, 2003, to November 24, 2003 (Public Law 107–296, Sec. 853(a)), the term means—

(A) $200,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) $300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

(ii) By or for the Department of Defense in support of a contingency operation if award is made and funds are obligated on or before September 30, 2003 (Public Law 107–107, Sec. 836(a)(1)(B)), the term means—

(A) $250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(B) $500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

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

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

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

(2) More than $10,000, does not have employees or average annual receipts

exceeding the size standard in 13 CFR part 121 (see 19.102) for the product or service it is providing on the subcontract.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

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

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

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

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

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

State and local taxes means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

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

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

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

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

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

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

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

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

Suspension means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is ''suspended.''

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

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

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

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

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

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

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

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

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

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

(iii) Was not submitted previously by another; and

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

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

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

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

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

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

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

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

Unsolicited proposal means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

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

Value engineering change proposal (VECP)–(1) means a proposal that—

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

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

(A) In deliverable end item quantities only;

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

(C) To the contract type only.

(2) For use in the clauses at—

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

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

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

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

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

Virgin material means—

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

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

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

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

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

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

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

Writing or *written* (see ''in writing'').

[66 FR 2118, Jan. 10, 2001, as amended at 66 FR 20896, Apr. 25, 2001; 66 FR 22083, May 2, 2001; 66 FR 27012, May 15, 2001; 66 FR 27409, May 16, 2001; 66 FR 53484, 53486, 53488, Oct. 22, 2001; 66 FR 65350, 65352, 65354, Dec. 18, 2001; 67 FR 6114, Feb. 8, 2002; 67 FR 13055, Mar. 20, 2002; 67 FR 42313, June 27, 2002; 67 FR 56121, Aug. 30, 2002; 67 FR 56118, Aug. 30, 2002; 68 FR 4049, Jan. 27, 2003; 68 FR 28080, May 22, 2003; 68 FR 28091, May 22, 2003; 68 FR 43858, July 24, 2003; 68 FR 56672, 56678, Oct. 1, 2003]

Subpart 2.2—Definitions Clause

2.201 Contract clause.

Insert the clause at 52.202–1, Definitions, in solicitations and contracts that exceed the simplified acquisition threshold. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, use the clause with its Alternate I. The contracting officer may include additional definitions, provided they are consistent with the clause and the FAR.

[66 FR 2127, Jan. 10, 2001]

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

3.000 Scope of part.

Subpart 3.1—Safeguards

3.101 Standards of conduct.
3.101–1 General.
3.101–2 Solicitation and acceptance of gratuities by Government personnel.
3.101–3 Agency regulations.
3.102 [Reserved]
3.103 Independent pricing.
3.103–1 Solicitation provision.
3.103–2 Evaluating the certification.
3.103–3 The need for further certifications.
3.104 Procurement integrity.
3.104–1 Definitions.
3.104–2 General.
3.104–3 Statutory and related prohibitions, restrictions, and requirements.
3.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
3.104–5 Disqualification.
3.104–6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.
3.104–7 Violations or possible violations.
3.104–8 Criminal and civil penalties, and further administrative remedies.
3.104–9 Contract clauses.

Subpart 3.2—Contractor Gratuities to Government Personnel

3.201 Applicability.
3.202 Contract clause.
3.203 Reporting suspected violations of the Gratuities clause.
3.204 Treatment of violations.

Subpart 3.3—Reports of Suspected Antitrust Violations

3.301 General.
3.302 Definitions.
3.303 Reporting suspected antitrust violations.

Subpart 3.4—Contingent Fees

3.400 Scope of subpart.
3.401 Definitions.
3.402 Statutory requirements.
3.403 Applicability.
3.404 Contract clause.
3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.
3.406 Records.

Subpart 3.5—Other Improper Business Practices

3.501 Buying-in.
3.501–1 Definition.
3.501–2 General.
3.502 Subcontractor kickbacks.
3.502–1 Definitions.
3.502–2 Subcontractor kickbacks.
3.502–3 Contract clause.
3.503 Unreasonable restrictions on subcontractor sales.
3.503–1 Policy.
3.503–2 Contract clause.

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

3.601 Policy.
3.602 Exceptions.
3.603 Responsibilities of the contracting officer.

Subpart 3.7—Voiding and Rescinding Contracts

3.700 Scope of subpart.
3.701 Purpose.
3.702 Definition.
3.703 Authority.
3.704 Policy.
3.705 Procedures.

Subpart 3.8—Limitation on the Payment of Funds to Influence Federal Transactions

3.800 Scope of subpart.
3.801 Definitions.
3.802 Prohibitions.
3.803 Certification and disclosure.
3.804 Policy.
3.805 Exemption.
3.806 Processing suspected violations.
3.807 Civil penalties.
3.808 Solicitation provision and contract clause.

Subpart 3.9—Whistleblower Protections for Contractor Employees

3.900 Scope of subpart.
3.901 Definitions.
3.902 Applicability.
3.903 Policy.
3.904 Procedures for filing complaints.
3.905 Procedures for investigating complaints.
3.906 Remedies.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42108, Sept. 19, 1983, unless otherwise noted.

3.000 Scope of part.

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

Subpart 3.1—Safeguards

3.101 Standards of conduct.

3.101–1 General.

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

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

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

3.101–3 Agency regulations.

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR part 735 to prescribe *Standards of Conduct.* These agency standards contain—

(1) Agency-authorized exceptions to 3.101–2; and

(2) Disciplinary measures for persons violating the standards of conduct.

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

3.102 [Reserved]

3.103 Independent pricing.

3.103–1 Solicitation provision.

The contracting officer shall insert the provision at 52.203–2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

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

(b) [Reserved]

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

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

[48 FR 42108, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25526, June 21, 1990; 60 FR 34744, July 3, 1995]

3.103–2 Evaluating the certification.

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

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

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

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

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

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

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

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

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

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

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

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

[48 FR 42108, Sept. 19, 1983, as amended at 55 FR 25526, June 21, 1990]

3.103–3 The need for further certifications.

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

3.104 Procurement integrity.

3.104–1 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104–6 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

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

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

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h)) with respect to procurements subject to that section, and

section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

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

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

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

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

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

In excess of $10,000,000 means—

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

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

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

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

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

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

Official means—

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

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

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

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

Participating personally and substantially in a Federal agency procurement means—

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

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

(ii) Preparing or developing the solicitation.

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

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

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

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

(3) *Participating substantially* means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

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

(i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches

for satisfying broad agency-level missions or objectives.

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

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

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

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

[67 FR 13059, Mar. 20, 2002]

3.104–2 General.

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

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

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201 and 10 U.S.C. 2207. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353 and 5 CFR part 2635;

(2) Contacts with an offeror during the conduct of an acquisition may constitute ''seeking employment,''(see subpart F of 5 CFR part 2636 and 3.104–3(c)(2)). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. 208 also may require an employee's disqualification from participation in the acquisition even if the employee's duties may not be considered ''participating personally and substantially,'' as this term is defined in 3.104–1;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641, that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee's official responsibility;

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

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

(6) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

[67 FR 13059, Mar. 20, 2002]

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

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[67 FR 13059, Mar. 20, 2002]

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

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

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

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the ''source selection information'' definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend ''Source Selection Information—See FAR 2.101 and 3.104.'' Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

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

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

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

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

(e) This section does not restrict or prohibit—

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

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

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt

of contractor bid or proposal information or source selection information does not occur; or

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

(f) This section does not authorize—

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

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

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

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

[67 FR 13059, Mar. 20, 2002]

3.104–5 Disqualification.

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

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

(1) Identify the procurement;

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

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

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

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

(3) Government officer or employee must also comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual is seeking employment, unless the individual receives—

(i) A waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(ii) An authorization in accordance with the requirements of subpart F of 5 CFR part 2635.

[67 FR 13059, Mar. 20, 2002]

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

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

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

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

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

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

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

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

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

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

[67 FR 13059, Mar. 20, 2002]

3.104–7 Violations or possible violations.

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

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

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

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

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

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

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

(2) Begin an investigation;

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

(4) Conclude that a violation occurred; or

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

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

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

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

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

(2) If a contract has been awarded—

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

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

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

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

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

(B) The agency head has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

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

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

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

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

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

[67 FR 13059, Mar. 20, 2002]

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

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

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

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

(c) An official who refuses to terminate employment discussions (see 3.104–5) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially

with the individual's ability to perform assigned duties.

[67 FR 13059, Mar. 20, 2002]

3.104–9 Contract clauses.

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

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

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

[67 FR 13059, Mar. 20, 2002]

Subpart 3.2—Contractor Gratuities to Government Personnel

3.201 Applicability.

This subpart applies to all executive agencies, except that coverage concerning exemplary damages applies only to the Department of Defense (10 U.S.C. 2207).

3.202 Contract clause.

The contracting officer shall insert the clause at 52.203–3, Gratuities, in solicitations and contracts with a value exceeding the simplified acquisition threshold, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

[61 FR 39200, July 26, 1996]

3.203 Reporting suspected violations of the Gratuities clause.

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

(a) What to report and how to report it; and

(b) The channels through which reports must pass, including the function and authority of each official designated to review them.

3.204 Treatment of violations.

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

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

(2) Intended by the gratuity to obtain a contract or favorable treatment under a contract (intent generally must be inferred).

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

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

(1) Terminate the contractor's right to proceed;

(2) Initiate debarment or suspension measures as set forth in subpart 9.4; and

(3) Assess exemplary damages, if the contract uses money appropriated to the Department of Defense.

Subpart 3.3—Reports of Suspected Antitrust Violations

3.301 General.

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

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

agency regulations, evidence of suspected antitrust violations in acquisitions for possible referral to (1) the Attorney General under 3.303 and (2) the agency office responsible for contractor debarment and suspension under subpart 9.4.

[48 FR 42108, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

3.302 Definitions.

As used in this subpart—

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

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

[49 FR 12974, Mar. 30, 1984, as amended at 66 FR 2127, Jan. 10, 2001; 67 FR 13055, Mar. 20, 2002]

3.303 Reporting suspected antitrust violations.

(a) Agencies are required by 41 U.S.C. 253b(i) and 10 U.S.C. 2305(b)(9) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by subpart 9.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Agency reports shall be addressed to the Attorney General, U.S. Department of Justice, Washington, DC 20530, Attention: Assistant Attorney General, Antitrust Division, and shall include—

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

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

(g) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of

the Assistant Attorney General, Antitrust Division.

[48 FR 42108, Sept. 19, 1983, as amended at 49 FR 12974, Mar. 30, 1984; 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 25526, June 21, 1990; 65 FR 36030, June 6, 2000; 68 FR 28080, May 22, 2003]

Subpart 3.4—Contingent Fees

3.400 Scope of subpart.

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those permitted by 10 U.S.C. 2306(b) and 41 U.S.C. 254(a).

3.401 Definitions.

As used in this subpart—

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

Bona fide employee, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

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

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

[48 FR 42108, Sept. 19, 1983, as amended at 66 FR 2127, Jan. 10, 2001]

3.402 Statutory requirements.

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

(a) Require in every negotiated contract a warranty by the contractor against contingent fees;

(b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and

(c) Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

3.403 Applicability.

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

[48 FR 42108, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

3.404 Contract clause.

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

[61 FR 39188, July 26, 1996]

3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

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

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) above, the chief of the contracting

office shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the Government's right to annul the contract or to recover the fee.

(3) Initiate suspension or debarment action under subpart 9.4.

(4) Refer suspected fraudulent or criminal matters to the Department of Justice, as prescribed in agency regulations.

[48 FR 42108, Sept. 19, 1983. Redesignated at 61 FR 39188, July 26, 1996]

3.406 Records.

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

[48 FR 42108, Sept. 19, 1983. Redesignated and amended at 61 FR 39188, July 26, 1996]

Subpart 3.5—Other Improper Business Practices

3.501 Buying-in.

3.501–1 Definition.

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

(1) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or

(2) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

[48 FR 42108, Sept. 19, 1983, as amended at 66 FR 2127, Jan. 10, 2001]

3.501–2 General.

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of (1) change orders or (2) follow-on contracts subject to cost analysis.

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

(1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multiyear quantity; or

(2) Priced options for additional quantities that, together with the firm contract quantity, equal the program requirements (see subpart 17.2).

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

48 FR 42108, Sept. 19, 1983, as amended at 62 FR 51270, Sept. 30, 1997]

3.502 Subcontractor kickbacks.

3.502–1 Definitions.

As used in this section—

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

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

Prime contract, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor, means a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this section, means any officer, partner, employee, or agent of a prime contractor.

Subcontract, means a contract or contractural action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or service of any kind under a prime contract.

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

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

[52 FR 6121, Feb. 27, 1987, as amended at 53 FR 34226, Sept. 2, 1988; 66 FR 2127, Jan. 10, 2001]

EDITORIAL NOTE: At 66 FR 2127, Jan. 10, 2001, as amended at 66 FR 14260, Mar. 9, 2001, §3.502–1 was amended by redesignating paragraphs (a) and (b) as (1) and (2). There are no designated paragraphs (a) and (b) in §3.502–1.

3.502–2 Subcontractor kickbacks.

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

(a) Prohibits any person from—

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

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

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

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

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

(d) Provides that—

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

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

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

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

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

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

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

audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.

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

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

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

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

[52 FR 6121, Feb. 27, 1987; 52 FR 9989, Mar. 27, 1987, as amended at 53 FR 34226, Sept. 2, 1988; 60 FR 48235, Sept. 18, 1995; 61 FR 39191, July 26, 1996; 62 FR 235, Jan. 2, 1997]

3.502–3 Contract clause.

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

[60 FR 48235, Sept. 18, 1995, as amended at 61 FR 39190, July 26, 1996]

3.503 Unreasonable restrictions on subcontractor sales.

3.503–1 Policy.

10 U.S.C. 2402 and 41 U.S.C. 253(g) require that subcontractors not be unreasonably precluded from making direct sales to the Government of any supplies or services made or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

[50 FR 35475, Aug. 30, 1985, and 51 FR 27116, July 29, 1986]

3.503–2 Contract clause.

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

[60 FR 48235, Sept. 18, 1995, as amended at 61 FR 39190, July 26, 1996]

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

3.601 Policy.

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

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

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

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

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

[55 FR 34864, Aug. 24, 1990]

3.602 Exceptions.

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

3.603 Responsibilities of the contracting officer.

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

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

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

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

Subpart 3.7—Voiding and Rescinding Contracts

SOURCE: 51 FR 27116, July 29, 1986, unless otherwise noted.

3.700 Scope of subpart.

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

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

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

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

[51 FR 27116, July 29, 1986, as amended at 62 FR 232, Jan. 2, 1997]

3.701 Purpose.

This subpart provides—

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

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

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

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

[62 FR 232, Jan. 2, 1997]

3.702 Definition.

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

3.703 Authority.

(a) Section 1(e) of Pub. L. 87–849, 18 U.S.C. 218 (*the Act*), empowers the President or the heads of executive agencies acting under regulations prescribed by the President, to declare void and rescind contracts and other transactions enumerated in the Act, in relation to which there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code (18 U.S.C. 201–224). Executive Order 12448, November 4, 1983, delegates the President's authority under the Act to the heads of the executive agencies and military departments.

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

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

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

[51 FR 27116, July 29, 1986, as amended at 62 FR 232, Jan. 2, 1997]

3.704 Policy.

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

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

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

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

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

[51 FR 27116, July 29, 1986, as amended at 62 FR 232, Jan. 2, 1997; 67 FR 13063, Mar. 20, 2002]

3.705 Procedures.

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

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

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

(1) A notice of the proposed action to declare void and rescind the contract

shall be made in writing and sent by certified mail, return receipt requested.

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

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

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

(i) States that determination;

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

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

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

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

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

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

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

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

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

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

(e) *Final agency decision.* The final agency decision shall be based on the information available to the agency head or designee, including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the agency decision declares void and rescinds the contract, the final decision shall specify the amounts due and property to be returned to the agency, and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision shall be sent promptly by certified mail, return receipt requested. Rescission of contracts under the authority of the Act and demand for recovery of the amounts expended and property transferred therefor, is not a claim within the meaning of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. 601–613, or part 33. Therefore, the procedures required by the CDA and the FAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart, and shall not be followed.

[51 FR 27116, July 29, 1986, as amended at 62 FR 232, Jan. 2, 1997]

Subpart 3.8—Limitations on the Payment of Funds to Influence Federal Transactions

SOURCE: 55 FR 3190, Jan. 30, 1990, unless otherwise noted.

3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing section 319 of the Department of the Interior and Related Agencies Appropriations Act, Pub. L. 101–121, which added a new section 1352 to title 31 U.S.C., entitled ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions'' (the Act).

3.801 Definitions.

Agency, as used in this section, means an executive agency as defined in 2.101.

Covered Federal action, as used in this section, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State, as used in this section, means a State of the United States, the District of Columbia, an outlying area of the

United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

[55 FR 3190, Jan. 30, 1990, as amended at 68 FR 28080, May 22, 2003]

3.802 Prohibitions.

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

(b) The Act also requires offerors to furnish a declaration consisting of both a certification and a disclosure. These requirements are contained in the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions.

(1) By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of the prohibitions in 31 U.S.C. 1352.

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

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

(1) *Agency and legislative liaison by own employees.* (i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this section, providing any information specifically requested by an agency or Congress is permitted at any time.

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

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

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

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

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

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

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

(v) Only those activities expressly authorized by subparagraph (c)(1) of this section are permitted under this section.

(2) *Professional and technical services.* (i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of—

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

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

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

(ii) For purposes of subdivision (c)(2)(i) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

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

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) (A) and (B) of this section are permitted under this section.

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

3.803 Certification and disclosure.

(a) Any contractor who requests or receives a Federal contract exceeding $100,000 shall submit the certification and disclosures required by the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, with its offer. Disclosures under this section shall be submitted to the contracting officer using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) of this section. An event that materially affects the accuracy of the information reported includes—

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

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

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

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

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

[55 FR 3190, Jan. 30, 1990, as amended at 55 FR 38516, Sept. 18, 1990]

3.804 Policy.

(a) The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding $100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

3.805 Exemption.

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this section whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of such exemption to Congress immediately after making such a determination.

3.806 Processing suspected violations.

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

3.807 Civil penalties.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804–3808, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

[55 FR 3190, Jan. 30, 1990, as amended at 67 FR 6120, Feb. 8, 2002]

3.808 Solicitation provision and contract clause.

(a) The provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed $100,000.

(b) The clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed $100,000.

Subpart 3.9—Whistleblower Protections for Contractor Employees

SOURCE: 60 FR 37776, July 21, 1995, unless otherwise noted.

3.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, *et seq.*, as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

3.901 Definitions.

As used in this supart—

Authorized official of an agency means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

Authorized official of the Department of Justice means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

Inspector General means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an

Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

[48 FR 42108, Sept. 19, 1983, as amended at 66 FR 2127, Jan. 10, 2001]

3.902 Applicability.

This subpart applies to all Government contracts.

3.903 Policy.

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

3.904 Procedures for filing complaints.

(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may file a complaint with the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain—

(1) The name of the contractor;

(2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(3) The substantial violation of law giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act; and

(5) The specific nature and date of the reprisal.

3.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.

(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.

(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The head of the contracting activity.

(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

3.906 Remedies.

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal.

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(b) Whenever a contractor fails to comply with an order, the head of the

agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code.

PART 4—ADMINISTRATIVE MATTERS

Sec.
4.000 Scope of part.

Subpart 4.1—Contract Execution

4.101 Contracting officer's signature.
4.102 Contractor's signature.
4.103 Contract clause.

Subpart 4.2—Contract Distribution

4.201 Procedures.
4.202 Agency distribution requirements.
4.203 Taxpayer identification information.

Subpart 4.3—Paper Documents

4.300 Scope of subpart.
4.301 Definition.
4.302 Policy.
4.303 Contract clause.

Subpart 4.4—Safeguarding Classified Information Within Industry

4.401 [Reserved]
4.402 General.
4.403 Responsibilities of contracting officers.
4.404 Contract clause.

Subpart 4.5—Electronic Commerce in Contracting

4.500 Scope of subpart.
4.501 [Reserved]
4.502 Policy.

Subpart 4.6—Contract Reporting

4.600 Scope of subpart.
4.601 Record requirements.
4.602 Federal Procurement Data System.
4.603 Solicitation provisions.

Subpart 4.7—Contractor Records Retention

4.700 Scope of subpart.
4.701 Purpose.
4.702 Applicability.
4.703 Policy.
4.704 Calculation of retention periods.
4.705 Specific retention periods.
4.705–1 Financial and cost accounting records.
4.705–2 Pay administration records.
4.705–3 Acquisition and supply records.
4.706 [Reserved]

Subpart 4.8—Government Contract Files

4.800 Scope of subpart.
4.801 General.
4.802 Contract files.
4.803 Contents of contract files.
4.804 Closeout of contract files.
4.804–1 Closeout by the office administering the contract.
4.804–2 Closeout of the contracting office files if another office administers the contract.
4.804–3 Closeout of paying office contract files.
4.804–4 Physically completed contracts.
4.804–5 Procedures for closing out contract files.
4.805 Storage, handling, and disposal of contract files.

Subpart 4.9—Taxpayer Identification Number Information

4.900 Scope of subpart.
4.901 Definition.
4.902 General.
4.903 Reporting contract information to the IRS.
4.904 Reporting payment information to the IRS.
4.905 Solicitation provision.

Subpart 4.10—Administrative Matters

4.1001 Policy.

Subpart 4.11—Central Contractor Registration

4.1100 Scope.
4.1101 Definitions.
4.1102 Policy.
4.1103 Procedures.
4.1104 Solicitation provision and contract clauses.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42113, Sept. 19, 1983, unless otherwise noted.

4.000 Scope of part.

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

[60 FR 28493, May 31, 1995]

Subpart 4.1—Contract Execution

4.101 Contracting officer's signature.

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

[60 FR 34736, July 3, 1995]

4.102 Contractor's signature.

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

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

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

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

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

[48 FR 42113, Sept. 19, 1983, as amended at 62 FR 235, Jan. 2, 1997]

4.103 Contract clause.

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

[49 FR 26741, June 29, 1984]

Subpart 4.2—Contract Distribution

4.201 Procedures.

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

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

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

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

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

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

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide

one copy of the contract to the cognizant administrative contracting officer and mark the copy ''FOR COST ACCOUNTING STANDARDS ADMINISTRATION ONLY'' (see 30.601(b));

(e) Provide one copy of each contract or modification that requires audit service to the appropriate field audit office listed in the ''Directory of Federal Contract Audit Offices'' (copies of this directory can be ordered from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402, referencing stock numbers 008–007–03189–9 and 008–007–03190–2 for Volumes I and II, respectively); and

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

[48 FR 42113, Sept. 19, 1983, as amended at 60 FR 34736, July 3, 1995]

4.202 Agency distribution requirements.

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

4.203 Taxpayer identification information.

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

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

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

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

(e) *Basic ordering agreements and indefinite-delivery contracts (other than Federal Supply Schedule contracts).*

(1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract (if the contractor is not required to provide this information to a central contractor registration database)—

(i) A copy of the agreement or contract with a copy of the completed solicitation provision at 52.204–3 or 52.212–3(b) as the last page of the agreement or contract; or

(ii) The contractor's TIN and type of organization information.

(2) Each contracting officer that places an order under a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (a) or (b) of this section.

[63 FR 58588, Oct. 30, 1998, as amended at 68 FR 56672, Oct. 1, 2003]

Subpart 4.3—Paper Documents

4.300 Scope of subpart.

This subpart provides policies and procedures on contractor-submitted paper documents.

[60 FR 28493, May 31, 1995]

4.301 Definition.

Printed or copied double-sided, as used in this subpart, means printing or reproducing a document so that information is on both sides of a sheet of paper.

[65 FR 36017, June 6, 2000]

4.302 Policy.

When electronic commerce methods (see 4.502) are not being used, a contractor should submit paper documents to the Government relating to an acquisition printed or copied double-sided on recycled paper whenever practicable. If the contractor cannot print or copy double-sided, it should print or copy single-sided on recycled paper.

[65 FR 36017, June 6, 2000]

4.303 Contract clause.

Insert the clause at 52.204–4, Printed or Copied Double-Sided on Recycled Paper, in solicitations and contracts that exceed the simplified acquisition threshold.

[65 FR 36017, June 6, 2000]

Subpart 4.4—Safeguarding Classified Information Within Industry

4.401 [Reserved]

4.402 General.

(a) Executive Order 12829, January 6, 1993 (58 FR 3479, January 8, 1993), entitled ''National Industrial Security Program'' (NISP), establishes a program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. Executive Order 12829 amends Executive Order 10865, February 20, 1960 (25 FR 1583, February 25, 1960), entitled ''Safeguarding Classified Information Within Industry,'' as amended by Executive Order 10909, January 17, 1961 (26 FR 508, January 20, 1961).

(b) The National Industrial Security Program Operating Manual (NISPOM) incorporates the requirements of these Executive Orders. The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of Central Intelligence, is responsible for issuance and maintenance of this Manual. The following DOD publications implement the program:

(1) *National Industrial Security Program Operating Manual* (NISPOM) (DOD 5220.22–M).

(2) *Industrial Security Regulation* (ISR) (DOD 5220.22–R).

(c) Procedures for the protection of information relating to foreign classified contracts awarded to U.S. industry, and instructions for the protection of U.S. information relating to classified contracts awarded to foreign firms, are prescribed in Chapter 10 of the NISPOM.

(d) Part 27, Patents, Data, and Copyrights, contains policy and procedures for safeguarding classified information in patent applications and patents.

[48 FR 42113, Sept. 19, 1983, as amended at 61 FR 31617, June 20, 1996]

4.403 Responsibilities of contracting officers.

(a) *Presolicitation phase.* Contracting officers shall review all proposed solicitations to determine whether access to classified information may be required by offerors, or by a contractor during contract performance.

(1) If access to classified information of another agency may be required, the contracting officer shall—

(i) Determine if the agency is covered by the NISP; and

(ii) Follow that agency's procedures for determining the security clearances of firms to be solicited.

(2) If the classified information required is from the contracting officer's agency, the contracting officer shall follow agency procedures.

(b) *Solicitation phase.* Contracting officers shall—

(1) Ensure that the classified acquisition is conducted as required by the

NISP or agency procedures, as appropriate; and

(2) Include (i) an appropriate Security Requirements clause in the solicitation (see 4.404), and (ii) as appropriate, in solicitations and contracts when the contract may require access to classified information, a requirement for security safeguards in addition to those provided in the clause (52.204–2, Security Requirements).

(c) *Award phase.* Contracting officers shall inform contractors and subcontractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract as follows:

(1) Agencies covered by the NISP shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized representative, is the approving official for the form and shall ensure that it is prepared and distributed in accordance with the ISR.

(2) Contracting officers in agencies not covered by the NISP shall follow agency procedures.

[48 FR 42113, Sept. 19, 1983, as amended at 61 FR 31617, June 20, 1996]

4.404 Contract clause.

(a) The contracting officer shall insert the clause at 52.204–2, Security Requirements, in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in paragraph (d) below apply.

(b) If a cost contract (see 16.302) for research and development with an educational institution is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) If a construction or architect-engineer contract where employee identification is required for security reasons is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the contracting agency is not covered by the NISP and has prescribed a clause and alternates that are substantially the same as those at 52.204–2, the contracting officer shall use the agency-prescribed clause as required by agency procedures.

[48 FR 42113, Sept. 19, 1983, as amended at 61 FR 31617, June 20, 1996]

Subpart 4.5—Electronic Commerce in Contracting

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 63 FR 58592, Oct. 30, 1998, unless otherwise noted.

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of electronic commerce in Federal acquisition as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

4.501 [Reserved]

4.502 Policy.

(a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (e.g., ''copy,'' ''document,'' ''page,'' ''printed,'' ''sealed envelope,'' and ''stamped'') shall not be interpreted to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the FAR (e.g., transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, as required by Section 30 of the OFPP Act (41 U.S.C. 426), the head of each agency, after consulting with the Administrator of OFPP, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

(1) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(2) Are implemented only after considering the full or partial use of existing infrastructures, (e.g., the Federal Acquisition Computer Network (FACNET));

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

(4) Include a single means of providing widespread public notice of acquisition opportunities through the Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

(5) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(c) Before using electronic commerce, the agency head shall ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

[63 R 58592, Oct. 30, 1998, as amended at 66 FR 27409, May 16, 2001; 68 FR 28094, May 22, 2003]

Subpart 4.6—Contract Reporting

4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Record requirements.

(a) Each executive agency shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements exceeding $25,000.

(b) With respect to each procurement carried out using competitive procedures, agencies shall be able to access from the computer file, as a minimum, the following information:

(1) The date of contract award.

(2) Information identifying the source to whom the contract was awarded.

(3) The property or services obtained by the Government under the procurement.

(4) The total cost of the procurement.

(5) Those procurements which result in the submission of a single bid or proposal so that they can be separately categorized and designated noncompetitive procurements using competitive procedures.

(c) In addition to paragraph (b) of this section with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—

(1) The reason under subpart 6.3 for the use of such procedures; and

(2) The identity of the organization or activity which conducted the procurement.

(d) In addition to the information described in paragraphs (b) and (c) of this section, for procurements in excess of $25,000, agencies shall be able to access information on the following from the computer file:

(1) Awards to small disadvantaged businesses using either set-asides or full and open competition.

(2) Awards to business concerns owned and controlled by women.

(3) The number of offers received in response to a solicitation.

(4) Task or delivery order contracts.

(5) Contracts for the acquisition of commercial items.

(e) In addition to the information described in paragraphs (b), (c), and (d) of this section, agencies must be able to access information from the computer file to identify bundled contracts with a total contract value, including all options, exceeding $5,000,000.

(f) Agencies must transmit this information to the Federal Procurement Data System in accordance with its procedures.

[50 FR 52429, Dec. 23, 1985, as amended at 52 FR 19802, May 27, 1987; 60 FR 42653, Aug. 16, 1995; 64 FR 72442, Dec. 27, 1999]

4.602 Federal Procurement Data System.

(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies report data to the Federal Procurement Data Center (FPDC), which collects, processes, and disseminates official statistical data

on Federal contracting. The data provide (1) a basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business concerns are sharing in Federal contracts; and

(3) Data for other policy and management control purposes.

(b) The *FPDS Reporting Manual* provides a complete list of reporting and nonreporting agencies and organizations. This manual (available at no charge from the General Services Administration, Federal Procurement Data Center, 7th & D Streets SW., room 5652, Washington, DC 20407, telephone (202) 401–1529, FAX (202) 401–1546) provides the necessary instruction to the data collection point in each agency as to what data are required and how often to provide the data.

(c) Data collection points in each agency report data on SF 279, Federal Procurement Data System (FPDS) Individual Contract Action Report, and SF 281, Federal Procurement Data System (FPDS) Summary Contract Action Report ($25,000 or Less), or computer-generated equivalent. Although the SF 279 and SF 281 are not mandatory for use by the agencies, they do provide the mandatory format for submitting data to the FPDS.

(d) The contracting officer must report a Contractor Identification Number for each successful offeror. A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors. The DUNS number reported must identify the successful offeror's name and address exactly as stated in the offer and resultant contract. The contracting officer must ask the offeror to provide its DUNS number by using the provision prescribed at 4.603(a). If the successful offeror does not provide its number, the contracting officer must contact the offeror and obtain the DUNS number.

(e) *Unique Procurement Instrument Identifier (PIID).* (1) The FPDS requires that each reporting agency assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to FPDS. Such identifiers shall comply with the contract numbering guidelines established by the Joint Financial Management Improvement Project. The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alphanumeric characters identifying bureau, offices, or other administrative subdivisions. The last portion of the PIID shall be numbered sequentially. The PIID may include other elements, as appropriate, such as fiscal year. Delivery orders, task orders, and call numbers must be unique in combination with the basic reference contract vehicle identifier. When the basic reference contract is available for multi-agency use (GWAC, Federal Supply Schedule contract, etc.), an ordering agency shall use the same agency identification prefix for its delivery orders, task orders, and call numbers as it uses for its contractual instruments.

(2) Agencies are required to have in place, no later than October 1, 2003, a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. To eliminate the possibility of duplication between agencies, agencies must submit their proposed identifier to the Federal Procurement Data Center, which will maintain a registry of the identifiers on the FPDC website and validate their use in all transactions.

[48 FR 42113, Sept. 19. 1983. Redesignated at 50 FR 52429, Dec. 23, 1985, and amended at 54 FR 29280, July 11, 1989; 53 FR 43388, Oct. 26, 1988; 55 FR 52788, Dec. 21, 1990; 56 FR 41744, Aug. 22, 1991; 57 FR 60572, Dec. 21, 1992; 60 FR 48259, Sept. 18, 1995; 61 FR 67412, Dec. 20, 1996; 62 FR 40236, July 25, 1997; 65 FR 60544, Oct. 11, 2000; 68 FR 56680, Oct. 1, 2003]

4.603 Solicitation provisions.

(a) Insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form; and

(2) Do not contain the clause at 52.204–7, Central Contractor Registration.

(b) Insert the provision at 52.204–5, Women-Owned Business (Other Than Small Business), in solicitations that—

(1) Are not set aside for small business concerns;

(2) Exceed the simplified acquisition threshold; and

(3) Are for contracts that will be performed in the United States or its outlying areas.

[61 FR 67412, Dec. 20, 1996, as amended at 63 FR 9050, Feb. 23, 1998; 64 FR 10532, Mar. 4, 1999; 68 FR 28080, May 22, 2003; 68 FR 56672, Oct. 1, 2003]

Subpart 4.7—Contractor Records Retention

4.700 Scope of subpart.

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

4.701 Purpose.

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

4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

(1) Audit and Records—Sealed Bidding (52.214–26).

(2) Audit and Records—Negotiation (52.215–2).

(b) This subpart is not mandatory on Department of Energy contracts for which the Comptroller General allows alternative records retention periods. Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., and the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 471 et seq.

[48 FR 42113, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 42650, Aug. 16, 1995; 60 FR 48211, Sept. 18, 1995; 62 FR 258, Jan. 2, 1997]

4.703 Policy.

(a) Except as stated in 4.703(b), contractors shall make available records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for (1) 3 years after final payment or, for certain records, (2) the period specified in 4.705 through 4.705–3, whichever of these periods expires first.

(b) Contractors shall make available the foregoing records and supporting evidence for a longer period of time than is required in 4.703(a) if—

(1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or

(2) The contractor, for its own purposes, retains the foregoing records and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.

(3) The contractor does not meet the original due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216–7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216–13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original due date.

(c) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not

shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

[48 FR 42113, Sept. 19, 1983, as amended at 51 FR 2649, Jan. 17, 1986; 53 FR 43388, Oct. 26, 1988; 54 FR 48982, Nov. 28, 1989; 59 FR 67015, Dec. 28, 1994; 60 FR 42650, Aug. 16, 1995; 62 FR 64915, Dec. 9, 1997]

4.704 Calculation of retention periods.

(a) The retention periods in 4.705 are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the final entry is made. The contractor should cut off the records in annual blocks and retain them for block disposal under the prescribed retention periods.

(b) When records generated during a prior contract are relied upon by a contractor for cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.

(c) If two or more of the record categories described in 4.705 are interfiled and screening for disposal is not practical, the contractor shall retain the entire record series for the longest period prescribed for any category of records.

4.705 Specific retention periods.

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

4.705–1 Financial and cost accounting records.

(a) Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices: Retain 4 years.

(b) Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies: Retain 4 years.

(c) Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses: Retain 4 years.

(d) Paid, canceled, and voided checks, other than those issued for the payment of salary and wages: Retain 4 years.

(e) Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the

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

(f) Labor cost distribution cards or equivalent documents: Retain 2 years.

(g) Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents: Retain 2 years.

4.705–2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

(b) Clock cards or other time and attendance cards: Retain 2 years.

(c) Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees: Retain 2 years.

[48 FR 42113, Sept. 19, 1983, as amended at 65 FR 36022, June 6, 2000; 67 FR 70517, Nov. 22, 2002]

4.705–3 Acquisition and supply records.

(a) Store requisitions for materials, supplies, equipment, and services: Retain 2 years.

(b) Work orders for maintenance and other services: Retain 4 years.

(c) Equipment records, consisting of equipment usage and status reports and equipment repair orders: Retain 4 years.

(d) Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract: Retain 4 years.

(e) Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials: Retain 4 years.

(f) Purchase order files for supplies, equipment, material, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda; e.g., memoranda of negotiations showing the principal elements of subcontract price negotiations (see 52.244–2): Retain 4 years.

(g) Production records of quality control, reliability, and inspection: Retain 4 years.

[48 FR 42113, Sept. 19, 1983, as amended at 63 FR 34060, June 22, 1998]

4.706 [Reserved]

Subpart 4.8—Government Contract Files

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files.

[65 FR 36022, June 6, 2000]

4.801 General.

(a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.

(b) The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of—

(1) Providing a complete background as a basis for informed decisions at each step in the acquisition process;

(2) Supporting actions taken;

(3) Providing information for reviews and investigations; and

(4) Furnishing essential facts in the event of litigation or congressional inquiries.

(c) The files to be established include—

(1) A file for cancelled solicitations;

(2) A file for each contract; and

(3) A file such as a contractor general file, containing documents relating—for example—to (i) no specific contract, (ii) more than one contract, or (iii) the contractor in a general way (e.g., contractor's management systems, past performance, or capabilities).

4.802 Contract files.

(a) A contract file should generally consist of—

(1) The contracting office contract file, that documents the basis for the

acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office;

(2) The contract administration office contract file, that documents actions reflecting the basis for and the performance of contract administration responsibilities; and

(3) The paying office contract file, that documents actions prerequisite to, substantiating, and reflecting contract payments.

(b) Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined; e.g., if all functions or any combination of the functions are performed by the same office.

(c) Files must be maintained at organizational levels that ensure—

(1) Effective documentation of contract actions;

(2) Ready accessibility to principal users;

(3) Minimal establishment of duplicate and working files;

(4) The safeguarding of classified documents; and

(5) Conformance with agency regulations for file location and maintenance.

(d) If the contract files or file segments are decentralized (e.g., by type or function) to various organizational elements or to other outside offices, responsibility for their maintenance must be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 2.101 must be protected from disclosure to unauthorized persons (see 3.104–4).

(f) Agencies may retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied.

[48 FR 42113, Sept. 19, 1983, as amended at 54 FR 20496, May 11, 1989; 55 FR 36794, Sept. 6, 1990; 59 FR 67016, Dec. 28, 1994; 62 FR 232, Jan. 2, 1997; 67 FR 13063, Mar. 20, 2002]

4.803 Contents of contract files.

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

(a) *Contracting office contract file.* (1) Purchase request, acquisition planning information, and other presolicitation documents.

(2) Justifications and approvals, determinations and findings, and associated documents.

(3) Evidence of availability of funds.

(4) Synopsis of proposed acquisition as required by part 5 or a reference to the synopsis.

(5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.

(6) Set-aside decision.

(7) Government estimate of contract price.

(8) A copy of the solicitation and all amendments thereto.

(9) Security requirements and evidence of required clearances.

(10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are—

(i) Completed solicitation sections A, B, and K;

(ii) Technical and management proposals;

(iii) Cost/price proposals;

(iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.

(11) Contractor's certifications and representations.

(12) Preaward survey reports or reference to previous preaward survey reports relied upon.

(13) Source selection documentation.

(14) Contracting officer's determination of the contractor's responsibility.

(15) Small Business Administration Certificate of Competency.

(16) Records of contractor's compliance with labor policies including equal employment opportunity policies.

(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver, or information other than cost or pricing data.

(18) Packaging and transportation data.

(19) Cost or price analysis.

(20) Audit reports or reasons for waiver.

(21) Record of negotiation.

(22) Justification for type of contract.

(23) Authority for deviations from this regulation, statutory requirements, or other restrictions.

(24) Required approvals of award and evidence of legal review.

(25) Notice of award.

(26) The original of (i) the signed contract or award, (ii) all contract modifications, and (iii) documents supporting modifications executed by the contracting office.

(27) Synopsis of award or reference thereto.

(28) Notice to unsuccessful quoters or offerors and record of any debriefing.

(29) Acquisition management reports (see subpart 4.6).

(30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.

(31) Report of postaward conference.

(32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.

(33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.

(34) Approvals or disapprovals of requests for waivers or deviations from contract requirements.

(35) Rejected engineering change proposals.

(36) Royalty, invention, and copyright reports (including invention disclosures) or reference thereto.

(37) Contract completion documents.

(38) Documentation regarding termination actions for which the contracting office is responsible.

(39) Cross-references to pertinent documents that are filed elsewhere.

(40) Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract.

(41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.

(b) *Contract administration office contract file.* (1) Copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.

(2) Any document modifying the normal assignment of contract administration functions and responsibility.

(3) Security requirements.

(4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

(5) Preaward survey information.

(6) Purchasing system information.

(7) Consent to subcontract or purchase.

(8) Performance and payment bonds and surety information.

(9) Postaward conference records.

(10) Orders issued under the contract.

(11) Notice to proceed and stop orders.

(12) Insurance policies or certificates of insurance or references to them.

(13) Documents supporting advance or progress payments.

(14) Progressing, expediting, and production surveillance records.

(15) Quality assurance records.

(16) Property administration records.

(17) Documentation regarding termination actions for which the contract administration office is responsible.

(18) Cross reference to other pertinent documents that are filed elsewhere.

(19) Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract.

(20) Contract completion documents.

(c) *Paying office contract file.* (1) Copy of the contract and any modifications.

(2) Bills, invoices, vouchers, and supporting documents.

(3) Record of payments or receipts.

(4) Other pertinent documents.

[48 FR 42113, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 54 FR 5054, Jan. 31, 1989; 55 FR 36794, Sept. 6, 1990; 60 FR 48211, Sept. 18, 1995; 61 FR 39188, July 26, 1996; 61 FR 67430, Dec. 20, 1996; 62 FR 232, Jan. 2, 1997; 63 FR 9052, Feb. 23, 1998; 65 FR 46074, July 26, 2000; 66 FR 27409, May 16, 2001]

4.804 Closeout of contract files.

4.804–1 Closeout by the office administering the contract.

(a) Except as provided in paragraph (c) below, time standards for closing out contract files are as follows:

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

(3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

(4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

(b) When closing out the contract files at 4.804–1(a)(2), (3), and (4), the contracting officer shall use the closeout procedures at 4.804–5. However, these closeout actions may be modified to reflect the extent of administration that has been performed. Quick closeout procedures (see 42.708) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

(c) A contract file shall not be closed if (1) the contract is in litigation or under appeal, or (2) in the case of a termination, all termination actions have not been completed.

[48 FR 42113, Sept. 19, 1983, as amended at 54 FR 34752, Aug. 21, 1989; 60 FR 34746, July 3, 1995]

4.804–2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

(b) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

[48 FR 42113, Sept. 19, 1983, as amended at 60 FR 34746, July 3, 1995]

4.804–3 Closeout of paying office contract files.

The paying office shall close the contract file upon issuance of the final payment voucher.

4.804–4 Physically completed contracts.

(a) Except as provided in paragraph (b) below, a contract is considered to be physically completed when—

(1)(i) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;

(ii) The contractor has performed all services and the Government has accepted these services; and

(iii) All option provisions, if any, have expired; or

(2) The Government has given the contractor a notice of complete contract termination.

(b) Facilities contracts and rental, use, and storage agreements are considered to be physically completed when—

(1) The Government has given the contractor a notice of complete contract termination; or

(2) The contract period has expired.

4.804–5 Procedures for closing out contract files.

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that—

(1) Disposition of classified material is completed;

(2) Final patent report is cleared;

(3) Final royalty report is cleared;

(4) There is no outstanding value engineering change proposal;

(5) Plant clearance report is received;

(6) Property clearance is received;

(7) All interim or disallowed costs are settled;

(8) Price revision is completed;

(9) Subcontracts are settled by the prime contractor;

(10) Prior year indirect cost rates are settled;

(11) Termination docket is completed;

(12) Contract audit is completed;

(13) Contractor's closing statement is completed;

(14) Contractor's final invoice has been submitted; and

(15) Contract funds review is completed and excess funds deobligated.

(b) When the actions in paragraph (a) above have been verified, the contracting officer administering the contract must ensure that a contract completion statement, containing the following information, is prepared:

(1) Contract administration office name and address (if different from the contracting office).

(2) Contracting office name and address.

(3) Contract number.

(4) Last modification number.

(5) Last call or order number.

(6) Contractor name and address.

(7) Dollar amount of excess funds, if any.

(8) Voucher number and date, if final payment has been made.

(9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown.

(10) A statement that all required contract administration actions have been fully and satisfactorily accomplished.

(11) Name and signature of the contracting officer.

(12) Date.

(c) When the statement is completed, the contracting officer must ensure that—

(1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract administration office is different from the contracting office); and

(2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

[48 FR 42113, Sept. 19, 1983, as amended at 54 FR 34752, Aug. 21, 1989; 64 FR 72445, Dec. 27, 1999]

4.805 Storage, handling, and disposal of contract files.

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of Part 4, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. Agency procedures for contract file disposal must include provisions that the documents specified in

paragraph (b) of this section may not be destroyed before the times indicated, and may be retained longer if the responsible agency official determines that the files have future value to the Government. When original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part. The retention periods for acquisitions at or below the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used small purchase procedures. The retention periods for acquisitions above the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used other than small purchase procedures.

Document	Retention period
(1) Records pertaining to Contract Disputes Act actions.	6 years and 3 months after final action or decision for files created prior to October 1, 1979. 1 year after final action or decision for files created on or after October 1, 1979.
(2) Contracts (and related records or documents, including successful proposals) exceeding the simplified acquisition threshold for other than construction.	6 years and 3 months after final payment.
(3) Contracts (and related records or documents, including successful proposals) at or below the simplified acquisition threshold for other than construction.	3 years after final payment.
(4) Construction contracts: (i) Above $2,000	6 years and 3 months after final payment.
(ii) $2,000 or less	3 years after final payment.
(iii) Related records or documents, including successful proposals, except for contractor's payrolls (see (b)(4)(iv)).	Same as contract file.
(iv) Contractor's payrolls submitted in accordance with Department of Labor regulations, with related certifications, anti-kickback affidavits, and other related papers.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date.
(5) Solicited and unsolicited unsuccessful offers, quotations, bids, and proposals: (i) Relating to contracts above the simplified acquisition threshold.	If filed separately from contract file, until contract is completed. Otherwise, the same as related contract file.
(ii) Relating to contracts at or below the simplified acquisition threshold.	1 year after date of award or until final payment, whichever is later.
(6) Files for canceled solicitations.	5 years after cancellation.
(7) Other copies of procurement file records used by component elements of a contracting office for administrative purposes.	Upon termination or completion.
(8) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(9) Data submitted to the Federal Procurement Data System (FPDS). Electronic data file maintained by fiscal year, containing unclassified records of all procurements other than simplified acquisitions, and information required under 4.601.	5 years after submittal to FPDS.
(10) Investigations, cases pending or in litigation (including protests), or similar matters.	Until final clearance or settlement, or, if related to a document identified in (b)(1)–(9), for the retention period specified for the related document, whichever is later.

[65 FR 36022, June 6, 2000]

Subpart 4.9—Taxpayer Identification Number Information

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 63 FR 58589, Oct. 30, 1998, unless otherwise noted.

4.900 Scope of subpart.

This subpart provides policies and procedures for obtaining—

(a) Taxpayer Identification Number (TIN) information that may be used for debt collection purposes; and

(b) Contract information and payment information for submittal to the payment office for Internal Revenue Service (IRS) reporting purposes.

4.901 Definition.

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

[60 FR 28493, May 31, 1995, as amended at 66 FR 2127, Jan. 10, 2001]

4.902 General.

(a) *Debt collection*. 31 U.S.C. 7701(c) requires each contractor doing business with a Government agency to furnish its TIN to that agency. 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government.

(b) *Information reporting to the IRS*. The TIN is also required for Government reporting of certain contract information (see 4.903) and payment information (see 4.904) to the IRS.

4.903 Reporting contract information to the IRS.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires heads of Federal executive agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications—

(i) Increasing the amount of a contract awarded before January 1, 1989, by $50,000 or more; and

(ii) Entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of $25,000 entered into on or after January 1, 1989.

(c) The information to report is—

(1) Name, address, and TIN of the contractor;

(2) Name and TIN of the common parent (if any);

(3) Date of the contract action;

(4) Amount obligated on the contract action; and

(5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

4.904 Reporting payment information to the IRS.

26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Government agencies, to report to the IRS, on Form 1099, payments made to certain contractors. 26 U.S.C. 6109 requires a contractor to provide its TIN if a Form 1099 is required. The payment office is responsible for submitting reports to the IRS.

4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204–3, Taxpayer Identification, in solicitations that—

(a) Do not include the clause at 52.204–7, Central Contractor Registration; and

(b) Are not conducted under the procedures of part 12.

[68 FR 56672, Oct. 1, 2003]

Subpart 4.10—Administrative Matters

SOURCE: 62 FR 51230, Sept. 30, 1997, unless otherwise noted.

4.1001 Policy.

Contracts may identify the items or services to be acquired as separately identified line items. Contract line items should provide unit prices or lump sum prices for separately identifiable contract deliverables, and associated delivery schedules or performance

periods. Line items may be further subdivided or stratified for administrative purposes (*e.g.*, to provide for traceable accounting classification citations).

[62 FR 51230, Sept. 30, 1997]

Subpart 4.11—Central Contractor Registration

SOURCE: 68 FR 56672, Oct. 1, 2003, unless otherwise noted.

4.1100 Scope.

This subpart prescribes policies and procedures for requiring contractor registration in the Central Contractor Registration (CCR) database, a part of the Business Partner Network (BPN) to—

(a) Increase visibility of vendor sources (including their geographical locations) for specific supplies and services; and

(b) Establish a common source of vendor data for the Government.

4.1101 Definitions.

As used in this subpart—

Agreement means basic agreement, basic ordering agreement, or blanket purchase agreement.

Business Partner Network means an integrated electronic infrastructure the Government uses to manage (*i.e.*, collect, validate, access and maintain) the information it needs to transact business with its contractors.

4.1102 Policy.

(a) Prospective contractors shall be registered in the CCR database prior to award of a contract or agreement, except for—

(1) Purchases that use a Government-wide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card only as a payment method;

(2) Classified contracts (*see* 2.101) when registration in the CCR database, or use of CCR data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by—

(i) Deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(ii) Contracting officers in the conduct of emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, *e.g.*, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs (*see* 6.302–2);

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration; and

(6) Micro-purchases that do not use the electronic funds transfer (EFT) method for payment and are not required to be reported (*see* subpart 4.6).

(b) If practical, the contracting officer shall modify the contract or agreement awarded under paragraph (a)(3) or (a)(4) of this section to require CCR registration.

(c)(1)(i) If a contractor has legally changed its business name, ''doing business as'' name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the contractor shall provide the responsible contracting officer a minimum of one business day's written notification of its intention to change the name in the CCR database; comply with the requirements of Subpart 42.12; and agree in writing to the timeline and procedures specified by the responsible contracting officer. The contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the contractor fails to comply with the requirements of paragraph (g)(1)(i) of the clause at 52.204–7, Central Contractor Registration, or fails to perform the agreement at 52.204–7(g)(1)(i)(3), and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the ''Suspension of Payment''

paragraph of the EFT clause of the contract.

(2) The contractor shall not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (*see* subpart 32.8, Assignment of Claims).

(3) Assignees shall be separately registered in the CCR database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the ''Suspension of payment'' paragraph of the EFT clause of the contract.

4.1103 Procedures.

(a) Unless the acquisition is exempt under 4.1102, the contracting officer—

(1) Shall verify that the prospective contractor is registered in the CCR database (*see* paragraph (b) of this section) before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration—

(i) Via the Internet at *http://www.ccr.gov*;

(ii) By calling toll-free: 1–888–227–2423, commercial: (269) 961–5757, or Defense Switched Network (DSN) (used at certain Department of Defense locations): 932–5757; or

(iii) As otherwise provided by agency procedures; and

(3) Shall modify a contract or agreement that does not already include the requirement to be registered in the CCR database and maintain registration until final payment, and whose period of performance extends beyond December 31, 2003—

(i) To incorporate, as appropriate, the clause at 52.204–7, Central Contractor Registration, and its Alternate I, or, for a contract for commercial items, an addendum to 52.212–4, Contract Terms and Conditions—Commercial Items, that requires the contractor to be registered in the CCR database by December 31, 2003, and maintain registration until final payment; and

(ii) In sufficient time to permit CCR registration by December 31, 2003.

(b) Need not verify registration before placing an order or call if the contract or agreement includes the clause at 52.204–7, or 52.212–4(t), or a similar agency clause.

(c) If the contracting officer, when awarding a contract or agreement, determines that a prospective contractor is not registered in the CCR database and an exception to the registration requirements for the award does not apply (*see* 4.1102), the contracting officer shall—

(1) If the needs of the requiring activity allow for a delay, make award after the apparently successful offeror has registered in the CCR database. The contracting officer shall advise the offeror of the number of days it will be allowed to become registered. If the offeror does not become registered by the required date, the contracting officer shall award to the next otherwise successful registered offeror following the same procedures (*i.e.*, if the next apparently successful offeror is not registered, the contracting officer shall advise the offeror of the number of days it will be allowed to become registered, etc.); or

(2) If the needs of the requiring activity do not allow for a delay, proceed to award to the next otherwise successful registered offeror, provided that written approval is obtained at one level above the contracting officer.

(d) Agencies shall protect against improper disclosure of contractor CCR information.

(e) The contracting officer shall, on contractual documents transmitted to the payment office, provide the DUNS number, or, if applicable, the DUNS+4, in accordance with agency procedures.

4.1104 Solicitation provision and contract clauses.

Except as provided in 4.1102(a), use the clause at 52.204–7, Central Contractor Registration, in solicitations and contracts. If modifying a contract or an agreement to require registration, use the clause with its Alternate I.