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**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(a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of its supersession.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) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports the contracting action.

**1.706 Expiration.**

Expiration dates are required for class D&F's and are optional for individual D&F's. Authority to act under an individual D&F expires when it is exercised or on an expiration date specified in the document, whichever occurs first. Authority to act under a class D&F expires on the expiration date specified in the document. When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F will continue until award of the contract(s) resulting from 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. 486(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.**

This part defines words and terms commonly used in this regulation. Other terms are defined in the part or subpart with which they are particularly associated (see the Index for locations).

## Subpart 2.1—Definitions

**2.101 Definitions.**

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

*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.

*Affiliates* means associated business concerns or individuals if, directly or indirectly, (a) either one controls or can control the other or (b) a third party controls or can control both.

*Agency head* (see *head of the agency*).

*Commercial component* means any component that is a commercial item.

*Commercial item* means—

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

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

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

(b) Any item that evolved from an item described in paragraph (a) 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;

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

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

(2) 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;

(d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;

(e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services—

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

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

(f) 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;

(g) Any item, combination of items, or service referred to in paragraphs (a) through (f), 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

(h) 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 Federal Government as part of an end item or of another component.

*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 bilaterial 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 (a) assigned postaward functions related to the administration of contracts and (b) assigned preaward functions.

*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.

*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 to administrative contracting officer or termination contracting officer does not (a) require that a duty be performed at a particular office or activity or (b) restrict in any way a contracting officer in the performance of any duty properly assigned.

*Day* means, unless otherwise specified, a calendar day.

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

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

*Facsimile* means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document, e.g., facsimile bid, the term 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* means the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) operational capability for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

*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).

*Full FACNET* means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, were entered into by the agency during the preceding fiscal year using an interim FACNET certified electronic automated information system.

*Governmentwide FACNET* means that the Federal Government has certified its FACNET capability, and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase

threshold, but not exceeding the simplified acquisition threshold, entered into by the executive agencies during the preceding fiscal year were made through electronic automated information systems with full FACNET certification.

*Head of the agency* (also called *agency head*) 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; and the term *authorized representative* means any person, persons, or board (other than the contracting officer) authorized to act for the head of the agency or Secretary.

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

*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.

(a) 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 which—

(1) Requires the use of such equipment; or

(2) Requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

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

(c) The term *information technology* does not include any equipment that is acquired by a contractor incidental to a contract.

*Interim FACNET* means a contracting office has been certified as having implemented the electronic automated information systems capability to provide widespread public notice of contracting opportunities, issue solicitations, and receive responses to solicitations and associated requests for information. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

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

*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 shall be considered a major system if—

(a) 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 $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for the acquisition exceeds $300,000,000 (based on fiscal year 1980 constant dollars);

(b) 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

(c) The system is designated a ''major system'' by the head of the agency responsible for the system.

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

*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 (except construction), the aggregate amount of which does not exceed $2,500, except that in the case of construction, the limit is $2,000.

*Micro-purchase threshold* means $2,500.

*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.

*Nondevelopmental item* means—

(a) 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;

(b) Any item described in paragraph (a) 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

(c) Any item of supply being produced that does not meet the requirements of paragraph (a) or (b) solely because the item is not yet in use.

*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;* responses to requests for quotations (negotiation) are *not* offers and are called *quotes.* For unsolicited proposals, see subpart 15.5.

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

*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.

*Shall* denotes the imperative.

*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 systems.

*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 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 as defined in 10 U.S.C. 101(a)(13), the term means $200,000.

*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.

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

*United States,* when used in a geographic sense, means the 50 States and the District of Columbia.

[48 FR 42107, Sept. 19, 1983, as amended at 50 FR 1727, Jan. 11, 1985; 50 FR 4221, Jan. 30, 1985; 50 FR 26903, June 28, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 2649, Jan. 17, 1986; 52 FR 19802, May 27, 1987; 54 FR 48981, Nov. 28, 1989; 56 FR 41744, Aug. 22, 1991; 60 FR 34736, July 3, 1995; 60 FR 42653, Aug. 16, 1995; 60 FR 48235, Sept. 18, 1995; 61 FR 39190, July 26, 1996; 61 FR 41468, Aug. 8, 1996]

## Subpart 2.2—Definitions Clause

### 2.201 Contract clause.

The contracting officer shall insert the clause at 52.202–1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the simplified acquisition threshold. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, provided they are consistent with the clause and the FAR.

[60 FR 34744, July 3, 1995, as amended at 61 FR 39190, July 26, 1996]

# PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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3.000 Scope of part.

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3.101–2 Solicitation and acceptance of gratuities by Government personnel.
3.101–3 Agency regulations.
3.102 [Reserved]
3.103 Independent pricing.
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3.103–2 Evaluating the certification.
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3.104 Procurement integrity.
3.104–1 General.
3.104–2 Applicability.
3.104–3 Statutory prohibitions and restrictions.
3.104–4 Definitions.
3.104–5 Disclosure, protection, and marking of proprietary and source selection information.
3.104–6 Restrictions on employment or business opportunity discussions between competing contractors and procurement officials.
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3.104–9 Certification requirements.
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3.202 Contract clause.
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## Subpart 3.3—Reports of Suspected Antitrust Violations

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

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