

# CHAPTER 35—PANAMA CANAL COMMISSION

(Parts 3500 to 3599)

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## SUBCHAPTER A—GENERAL

### PART 3501—FEDERAL ACQUISITION REGULATIONS SYSTEM

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

SOURCE: 55 FR 7635, Mar. 2, 1990, unless otherwise noted.

#### 3501.000 Scope of part.

This part sets forth basic policies and general information about the Panama Canal Commission Acquisition Regulation, referred to as the PAR, and its relationship to the Federal Acquisition Regulation, referred to as the FAR.

#### Subpart 3501.1—Purpose, Authority, Issuance

##### 3501.101 Purpose.

(a) The Federal Acquisition Regulations System brings together, in title 48 of the Code of Federal Regulations (CFR), the acquisition regulations of all executive agencies of the United States Government. This subpart establishes the PAR as chapter 35 of title 48, CFR. The FAR, which is the primary document for all agencies within this system, is issued as chapter 1 of title 48, CFR.

(b) The purpose of the PAR is to implement the FAR where further implementation is needed and to supplement the FAR when coverage is needed for subject matter not contained in the FAR. The PAR is not, by itself, a complete regulation. It must be used in conjunction with, and is subordinate to, the FAR.

##### 3501.102 Authority.

The PAR and amendments thereto are issued by the Administrator of the Panama Canal Commission (Commission) pursuant to the authority of section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, and other applicable law.

##### 3501.103 Applicability.

The FAR and the PAR apply to all acquisitions of the Commission, except where expressly excluded.

##### 3501.104 Issuance.

##### 3501.104-1 Publication and code arrangement.

(a) The PAR is published in—

- (1) The FEDERAL REGISTER;
- (2) Cumulated form at 48 CFR chapter 35; and
- (3) A separate loose-leaf form.

**3501.104-2 Arrangement of regulations.**

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

(b) *Numbering.* (1) Where the PAR implements the FAR, the implementing part, subpart, section or subsection of the PAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 35 or a 350 such that there will always be four numbers to the left of the decimal. For example, the PAR implementation of FAR 1.104-1 is shown as 3501.104-1 and the PAR implementation of FAR subpart 24.1 is shown as subpart 3524.1. Similarly, individual paragraphs at the section and subsection levels of the PAR correspond, to the extent feasible, to the FAR paragraph designations that are being implemented.

(2) Material which supplements the FAR as new parts, subparts, sections, or subsections will be assigned the numbers 70 and up. For example, there is no FAR coverage on the preferential acquisition of supplies and services obtainable in the Republic of Panama as provided for in Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977. This supplementary material is identified as part 3570.

(3) Because the PAR implements the FAR only where further implementation is necessary, there are gaps in the PAR numbering and paragraphing sequence. For example, the PAR skips from part 3510 to part 3513, from subpart 3501.4 to subpart 3501.6, and from section 3501.301 to section 3501.303 because the FAR coverage at parts 11 and 12, subpart 1.5, and section 1.302, respectively, does not require further implementation. Similarly, section 3501.405 of the PAR begins at paragraph (d) because paragraphs (a), (b), and (c)

at FAR 1.405 do not require further implementation.

(c) *References and citations.* (2) This regulation may be referred to as the Panama Canal Commission Acquisition Regulation or the PAR. References to PAR material outside this regulation may be cited in informal documents as PAR followed by the identifying number. For example, this subparagraph would be informally cited as PAR 3501.104-2(c)(2). In formal documents outside this regulation, such as legal briefs, references to PAR material should include reference to title 48 of the Code of Federal Regulations. For example, this subparagraph would be formally cited as 48 CFR 3501.104-2(c)(2).

(3) References to FAR or PAR material within this regulation will be made as follows:

(i) FAR parts or subparts will be referred to in those terms followed by the identifying number—for example, FAR part 1; FAR subpart 1.1. FAR subdivisions below the subpart level (i.e., sections, subsections, paragraphs, subparagraphs, or subdivisions) will simply state FAR followed by the identifying number—for example, FAR 1.104-2(c)(3)(i).

(ii) PAR parts or subparts will be referred to only as part or subpart followed by the identifying number—for example, part 1; subpart 1.1. PAR subdivisions below the subpart level will simply indicate the identifying number—for example, this subdivision would be cited as 3501.104-2(c)(3)(ii).

**3501.104-3 Copies.**

Copies of the PAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of the loose-leaf PAR are distributed within the Panama Canal Commission and may be obtained from the Administrative Services Division, Records Management Branch, telephone (507) 52-7642.

**3501.105 OMB approval under the Paperwork Reduction Act.**

The information collection and recordkeeping requirements contained in

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3501.403

the PAR have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). OMB control number 3207-0007 is assigned to the following PAR sections:

### *PAR Sections*

3513.107(a)(4)(i)  
3513.107(a)(4)(ii)  
3513.107(a)(4)(iii)  
3513.107(a)(4)(iv)  
3515.804-6  
3536.571

## Subpart 3501.2—Administration

### **3501.201 Maintenance of the FAR.**

#### **3501.201-1 The two councils.**

(e)(2) The Commission's Procurement Executive, in consultation with the General Counsel, is responsible for overseeing the development of the agency position on proposed revisions to the FAR and responding to the FAR Secretariat when such action is appropriate.

## Subpart 3501.3—Agency Acquisition Regulations

### **3501.301 Policy.**

(a)(1) The Procurement Executive, in consultation with the General Counsel and such other agency officials as may be appropriate, is responsible for the development, preparation, and maintenance of PAR issuances by the Administrator. In addition, the Procurement Executive is authorized to issue internal policies, procedures, instructions, and guidelines to clarify or implement the FAR or PAR within the Commission. Such internal issuances are subject to review by the General Counsel.

(2) Heads of contracting activities and division chiefs are authorized to issue internal guidance of the type described in FAR 1.301(a)(2).

(b) Public participation in the promulgation of the PAR shall be in the same manner as specified for the FAR in FAR subpart 1.5. Where solicitation of public comment on significant revisions is impracticable prior to promulgation, the revisions may be set forth in temporary regulations. Comments will be solicited on the temporary reg-

ulations and considered prior to formulating the final regulations.

### **3501.303 Publication and codification.**

(a) The PAR is codified as chapter 35 in title 48, Code of Federal Regulations.

(c) The PAR replaces the former Part 87—Procurement, of the Panama Canal Administration and Regulations (PCAR), in its entirety.

### **3501.304 Agency control and compliance procedures.**

(a) Whenever contracting activities and organizational components thereof wish to propose for publication in the FEDERAL REGISTER an agency acquisition regulation that they consider necessary to implement or supplement the FAR or PAR, they must prepare a memorandum that explains the need, background, justification, and significant aspects of the proposed regulation and send it to the Procurement Executive. The Procurement Executive and General Counsel will (1) review the proposed regulation to assure compliance with FAR part 1, and (2) either approve or disapprove it. If approved, the Procurement Executive will prepare the proposed regulation in FEDERAL REGISTER format for issuance by the Administrator.

## Subpart 3501.4—Deviations From the FAR and PAR

### **3501.401 Definition.**

A deviation from the PAR is defined in the same manner as a deviation from the FAR (see FAR 1.401).

### **3501.403 Individual deviations.**

Requests for individual deviations from the FAR and the PAR shall be submitted by the Head of the Contracting Activity (HCA) through the General Counsel to the Procurement Executive for approval. Requests submitted shall cite the specific part of the FAR or PAR from which it is desired to deviate, shall set forth the nature of the deviation(s), and shall give the reasons for the action requested. The Procurement Executive shall transmit copies of approved individual FAR deviations to the FAR Secretariat.

**3501.404 Class deviations.**

Requests for class deviations to the PAR shall be submitted in advance by the HCA through the General Counsel to the Procurement Executive for processing in accordance with FAR 1.404 and this section. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 3501.403. The Procurement Executive may approve class deviations to the FAR and the PAR and shall transmit copies of approved class FAR deviations to the FAR Secretariat as required by FAR 1.404.

**3501.405 Deviations pertaining to treaties and executive agreements.**

(d) The Procurement Executive is designated as the central control point within the Commission for transmittal of deviations from the FAR required to comply with treaties and executive agreements to which the United States is a party. Copies of the text of any deviation authorized in accordance with FAR 1.405 (b) or (c) shall be forwarded by the HCA to the Procurement Executive through the General Counsel for further transmittal to the FAR Secretariat.

(e) When a deviation required to comply with a treaty or executive agreement is inconsistent with FAR coverage based on law, the Procurement Executive shall forward a request for deviation to the FAR Secretariat for processing as required by FAR 1.405(e).

### Subpart 3501.6—Contracting Authority and Responsibilities

**3501.601 General.**

(a) Commission contracting activities are established within the General Services Bureau for the acquisition of supplies and services, and the Engineering and Construction Bureau for the acquisition of construction, including architect-engineer services and other services related to construction. The Directors of these bureaus are designated by the Administrator as Heads of Contracting Activities and are the officials who have the authority and responsibility to appoint contracting officers to contract for authorized sup-

plies and services, including construction and architect-engineer services, that fall within the scope of their respective contracting activities.

(b) In addition, bureau directors and heads of independent units are delegated contracting authority, not to exceed amounts established by the General Services Director, for the decentralized procurement of supplies and services on Division Purchase Orders (see 3513.505-71). This authority is granted to assist Commission activities in expediting minor purchases. Such authority may be redelegated pursuant to 3513.505-71(b)(1)(ii).

**3501.602 Contracting officers.****3501.602-3 Ratification of unauthorized commitments.***(a) Definitions.*

*Responsible contracting officer*, as used in 3501.602-370, means the individual at the appropriate level of contracting authority who can execute any contractual document that may be required to formalize an unauthorized commitment. Depending on the circumstances, the term can apply to the existing contracting officer, the prospective contracting officer (when a purchase order or contract does not exist) or, in the case of a contracting officer who acted in excess of the limits of his delegated authority, the next individual in the chain of contracting authority who has the appropriate authority to execute the necessary contractual document.

(b) *Policy.* (1) Unauthorized commitments do not legally obligate the Commission for the expenditure of funds. If an unauthorized commitment would have been valid had it been authorized by a contracting officer acting within the limits of his delegated authority, then the unauthorized commitment may be ratified in accordance with the procedures prescribed in 3501.602-370. If an unauthorized commitment is otherwise improper, it cannot be ratified and the Commission must deny legal liability, in which case the individual who made the unauthorized commitment may be personally liable for such action.

(2) The cognizant Head of the Contracting Activity (HCA) is the ratification official for the approval of unauthorized commitments and the Procurement Executive is the reviewing official for such approvals. The HCA may ratify an unauthorized commitment only if:

(i) The conditions in FAR 1.602-3(c) are applicable, and

(ii) The Procurement Executive concurs with the proposed ratification.

#### **3501.602-370 Procedures.**

These procedures apply to all unauthorized commitments, whether written or oral and without regard to dollar value. Unauthorized commitments (other than claims to be processed in accordance with FAR subpart 33.2) shall be processed as follows:

(a) Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, that person shall be advised by the cognizant contracting office that such work is being or was performed at that person's own risk pending establishment of valid contractual coverage.

(b) The individual who made the unauthorized commitment shall furnish to the responsible contracting officer all records and documents concerning the commitment and a complete, written statement of the facts including, but not limited to, a description of the work or product ordered; why the work or product was necessary to and for the benefit of the Commission; the estimated or agreed upon price; citation of funds available at time of commitment; the current status of performance by the actual or prospective contractor; the reason why normal acquisition procedures were not followed and, if a contract does not exist, a statement as to why the prospective contractor was selected including, if applicable, identification of other sources that were considered.

(c) The responsible contracting officer shall—

(1) Obtain from the head of the requisitioning office with appropriate approval authority:

(i) Affirmation that the Commission has or will obtain a benefit from the unauthorized commitment,

(ii) A written certification by the responsible funding certification officer that funds presently are available and were available at the time the unauthorized commitment was made, and when applicable,

(iii) A statement of corrective action that office will take to preclude repetition of the incident;

(2) Review and determine the adequacy of all facts, records, and documents furnished, and when necessary, obtain any additional material or information pertinent to the review and evaluation of the unauthorized commitment;

(3) Determine whether the price is fair and reasonable, and state in the record the reason therefor;

(4) Prepare, certify, and obtain any necessary written approval of a justification for other than full and open competition when required pursuant to FAR subpart 6.3;

(5) State in the record the corrective action to be taken to preclude repetition of the incident if the individual that made the unauthorized commitment is under the supervision of the responsible contracting officer; and

(6) Forward the request for ratification (i.e., all the information required in paragraphs (b) and (c) of this subsection) to the cognizant HCA, together with a written recommendation of an appropriate course of action including, at a minimum, a specific recommendation as to whether payment should be made and the reasons therefor.

(d) The cognizant HCA, upon receipt and review of the request for ratification file, shall determine whether ratification is in order. If so, the HCA shall forward the file to the Procurement Executive for review. If not, the HCA shall return the file to the responsible contracting officer, together with a written explanation for the decision and instructions for disposition of the case.

(e) The Procurement Executive shall review proposed ratifications submitted by HCAs. If the Procurement Executive concurs that ratification is in order, he shall obtain General Counsel concurrence that payment may be

made and return the file to the cognizant HCA for that individual's ratification and subsequent return to the responsible contracting officer together with, when appropriate, instructions to issue a purchase order, contract, or contract modification, as applicable. If the Procurement Executive does not concur with the proposed ratification, he shall return the file to the HCA, together with a written explanation for the decision and instructions for disposition of the case. He will provide a copy to the General Counsel.

**3501.603 Selection, appointment, and termination of appointment.**

**3501.603-1 General.**

Heads of Contracting Activities may appoint as contracting officers one or more capable and qualified individuals of their respective staffs. These appointments may be made by memorandum delegating contracting authority, including any limitations to such authority, to positions or to named individuals. Appointments shall be evidenced by a "Certificate of Appointment", as required by FAR 1.603-3. If contracting authority is delegated to a position by memorandum, the "Certificate of Appointment" shall state the name of the individual assigned to the position.

**3501.670 Legal review of proposed contract actions.**

**3501.670-1 Contract actions requiring legal review.**

The following contract actions shall be submitted to the General Counsel for review for legal sufficiency:

- (a) All proposed contracts with an estimated cost of \$100,000 or more (in advance of issuance);
- (b) All alleged mistakes in bids, other than apparent clerical mistakes that can be corrected pursuant to FAR 14.406-2;
- (c) All determinations and findings required under the FAR;
- (d) All proposed utility contracts;
- (e) All proposed contracts containing insurance requirements not prescribed in the FAR or this PAR;
- (f) In sealed bid procurements, all proposed awards to other than the lowest responsible and responsive bidder;

- (g) Rejections of all bids and cancellations of invitations for bids;

- (h) Proposed letter contracts;

- (i) Written protests, whether before or after award;

- (j) Unusual, novel, or unique proposed agreements, and unsolicited proposals that are to be negotiated pursuant to FAR subpart 15.5 and subpart 3515.5;

- (k) Proposed ADP contracts of \$25,000 or more when purchase is to be from other than a Federal Supply Service contract source;

- (l) Termination actions, including pre-termination letters;

- (m) All actions taken under the Disputes clause, including final decisions;

- (n) Any action concerning suspension or debarment of an individual or concern;

- (o) Deviations from the FAR or PAR;

- (p) Any contract matter relating to litigation, disputes, or protest resolution before the courts of the United States or of the Republic of Panama, or before the Corps of Engineers Board of Contract Appeals or the Comptroller General of the United States;

- (q) Determinations of nonresponsibility;

- (r) Any proposed contract modification, including proceed orders, which may result in a change in the contract price of more than \$25,000, or any proposed contract modification or proceed order granting a time extension of more than 20 calendar days;

- (s) Any proposed contract modification resulting from either a contractor's settlement proposal under the Termination for Convenience clause, or a contractor's claim under the Suspension of Work clause, regardless of the contract value or the terms of the proposed modification;

- (t) Freedom of Information Act and Privacy Act matters involving contractors or arising under or in relation to any contract;

- (u) Administrative setoffs to recoup Government funds under any contract; and

- (v) Requests for approval of advance payments on contracts other than those excluded in FAR 32.404.

**3501.670-2 Documents to be submitted for legal review.**

The following documents are to be submitted in connection with contract actions requiring legal review pursuant to 3501.670-1:

(a) For proposed construction contracts, a copy of the solicitation documents, excluding drawings, prior to the time they are furnished to prospective offerors, when feasible;

(b) For all other proposed contracts and agreements, a copy of the document to be used in the solicitation and/or award, including any other documents, excluding drawings, which support the proposed procurement action, prior to the time they are mailed to the prospective offerors, when feasible;

(c) For all other contract actions not specified in paragraph (a) or (b) of this subsection, a copy of the document itself and copies of all other documents, excluding drawings, relating to the action.

**3501.670-3 General Counsel's legal review.**

(a) The General Counsel shall conduct a review of the legal sufficiency of the contract action. The General Counsel shall provide to the contracting officer a written determination of whether the proposed action is legally sufficient, or the details of any insufficiency and a recommended course of action to overcome the insufficiency. A contracting officer shall not take action which is contrary to a written and timely determination of legal insufficiency from the General Counsel.

(b) The General Counsel shall complete the legal review as quickly as possible, with due regard to those procurement actions where circumstances dictate an unusually short period for completing the action.

**PART 3502—DEFINITIONS OF WORDS AND TERMS**

AUTHORITY: 40 U.S.C. 486(c); Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

**Subpart 3502.1—Definitions****3502.101 Definitions.**

*Administrator* means the chief executive officer of the Panama Canal Commission. The Administrator, subject to the direction and under the supervision of the Board of Directors, exercises general and active control over the Commission's offices, business and operations, and general supervision over its officials, agents, attorneys, and employees. As contemplated at FAR 2.101, unless otherwise indicated, "Administrator" also means the Commission's Deputy Administrator.

*Agency head* means the Administrator of the Panama Canal Commission.

*Bureau Director* means an official appointed by the Administrator to direct and manage one of the Commission's three operating bureaus.

*Commission* means the Panama Canal Commission.

*Designated Agency Ethics Official* means an individual appointed by the Administrator pursuant to the "Ethics in Government Act of 1978" to coordinate and manage the agency's ethics program and to act as the principal contact with the Office of Government Ethics.

*Designated contractors* (sometimes referred to as "special regime contractors") means:

(a)(1) Natural persons who are nationals or permanent residents of the United States, or

(2) Corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of such natural persons—

(i) To whom contracts are awarded by the Panama Canal Commission for work to be performed in whole or in part in the Republic of Panama, and

(ii) Who are so designated in writing by the Commission.

(b) The term also includes subcontractors of designated contractors (1) who are nationals or permanent residents of the United States, or (2) which are corporations or other legal entities organized under the laws of the

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United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

*Head of Independent Unit* means an official appointed by the Administrator to direct and manage one of the Administrator's staff offices.

*Head of the Contracting Activity (HCA)* means the General Services Director and the Engineering and Construction Director.

*Implementing Agreement* means the Agreement in Implementation of Article III of the Panama Canal Treaty (TIAS 10031), signed at Washington, DC on September 7, 1977.

*Inspector General* means the Office of the Inspector General.

*Procurement Executive* means an individual designated as the senior procurement executive pursuant to 41 U.S.C. 414(3), by the Administrator from members of his staff. The Procurement Executive is delegated agency-wide responsibility to oversee development of procurement systems, establish procurement policy, evaluate procurement system performance in accordance with approved criteria, carry out specific responsibilities as assigned in this PAR, enhance career management of the procurement work force, and certify to the Administrator that procurement systems meet approved criteria.

*Treaty* means the Panama Canal Treaty (TIAS 10030), signed at Washington, DC on September 7, 1977.

[55 FR 7638, Mar. 2, 1990]

**PART 3503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

Sec.

3503.000 Scope of part.

**Subpart 3503.1—Safeguards**

- 3503.101 Standards of conduct.
- 3503.101-3 Agency regulations.
- 3503.103 Independent pricing.
- 3503.103-2 Evaluating the certification.

48 CFR Ch. 35 (10-1-96 Edition)

**Subpart 3503.2—Contractor Gratuities to Government Personnel**

- 3503.203 Reporting suspected violations of the Gratuities clause.
- 3503.204 Treatment of violations.

**Subpart 3503.3—Reports of Suspected Antitrust Violations**

- 3503.301 General.

**Subpart 3503.4—Contingent Fees**

- 3503.408 Evaluation of the SF 119.
- 3503.408-1 Responsibilities.
- 3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

**Subpart 3503.5—Other Improper Business Practices**

- 3503.502 Subcontractor kickbacks.
- 3503.502-2 General.

**Subpart 3503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

- 3503.600-70 Scope of subpart.
- 3503.600-71 Definitions.
- 3503.601 Policy.
- 3503.602 Exceptions.
- 3503.603 Responsibilities of the contracting officer.
- 3503.670 Exclusions.

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

SOURCE: 55 FR 7638, Mar. 2, 1990, unless otherwise noted.

**3503.000 Scope of part.**

This part implements FAR part 3, cites Commission regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

**Subpart 3503.1—Safeguards**

**3503.101 Standards of conduct.**

**3503.101-3 Agency regulations.**

Commission regulations on Employee Responsibilities and Conduct are contained in the Commission's "Employee Code of Conduct". All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions governing employee conduct. Any problems or questions concerning standards of conduct

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shall be referred to the Designated Agency Ethics Official.

**3503.103 Independent pricing.**

**3503.103-2 Evaluating the certification.**

(b)(3) Whenever an offer is rejected under FAR 3.103-2, or the Certificate of Independent Price Determination is suspected of being false, the contracting officer shall report the situation to the General Counsel through the cognizant Head of the Contracting Activity for referral to the Attorney General in accordance with FAR 3.303.

**Subpart 3503.2—Contractor Gratuities to Government Personnel**

**3503.203 Reporting suspected violations of the Gratuities clause.**

Any Commission employee who suspects that a violation of the Gratuities clause has occurred shall immediately report the suspected violation to the cognizant Head of the Contracting Activity. Upon being notified of the suspected violation, the HCA shall inform the Designated Agency Ethics Official and the Procurement Executive, by written memorandum, of the pertinent details of the suspected violation.

**3503.204 Treatment of violations.**

(b) When the HCA determines that there is probable cause to believe that a violation of the Gratuities clause has been committed, the case shall be handled as provided in the Commission debarment and suspension procedures in subpart 3509.4.

(c) The final decision as to which remedies the Commission may pursue if a violation of the Gratuities clause is found by the Debarment Committee (see 3509.406-3(b)), is reserved to the Administrator.

**Subpart 3503.3—Reports of Suspected Antitrust Violations**

**3503.301 General.**

(b) The contracting officer shall report any suspected violations of antitrust laws to the General Counsel through the cognizant Head of the Contracting Activity for referral to the Attorney General and the Commission's

Debarment Committee in accordance with FAR subpart 3.3.

**Subpart 3503.4—Contingent Fees**

**3503.408 Evaluation of the SF 119.**

**3503.408-1 Responsibilities.**

(b) The contracting officer's documentation of the evaluation of the Standard Form 119, Statement of Contingent or Other Fees, conclusions, and any proposed actions shall be reviewed by the cognizant Head of the Contracting Activity in coordination with the General Counsel.

**3503.409 Misrepresentations or violations of the Covenant Against Contingent Fees.**

(a) Commission personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentations, or violations of the Covenant Against Contingent Fees shall report the matter promptly to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity.

**Subpart 3503.5—Other Improper Business Practices**

**3503.502 Subcontractor kickbacks.**

**3503.502-2 General.**

Any Commission employee who suspects that a violation of the Anti-Kickback Act has occurred shall immediately report the suspected violation to the Designated Agency Ethics Official and the cognizant Head of the Contracting Activity. Suspected violations shall be treated in accordance with the debarment and suspension procedures at subpart 3509.4.

**Subpart 3503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

**3503.600-70 Scope of subpart.**

This subpart implements and supplements FAR subpart 3.6 and sets forth Commission policy and procedures for identifying and dealing with conflicts of interest and improper influence or

favoritism in connection with contracts involving current or former Commission employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government.

**3503.600-71 Definitions.**

*Commission employee* means:

(a) Any officer or employee of the Panama Canal Commission who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, or

(b) Any officer or employee of the Commission who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days and who actually served more than 60 days during such 365-day period.

**3503.601 Policy.**

Except as authorized at 3503.602 or excluded at 3503.670, no contract shall be awarded without competition to a—

(a) Former Commission employee (or to a business concern or other organization owned or substantially owned or controlled by a former Commission employee) whose employment terminated within 365 calendar days before submission of an offer to the Commission; or

(b) Prospective contractor which employs, or proposes to employ, a current Commission employee or a former Commission employee whose employment terminated within 365 calendar days before submission of an offer to the Commission, if either of the following conditions exist:

(1) The current or former Commission employee is or was involved in developing or negotiating the offer for the prospective contractor.

(2) The current or former Commission employee will be involved directly or indirectly in the management, administration, or performance of the contract.

**3503.602 Exceptions.**

(a) The Director, Office of Executive Administration in his capacity as the Designated Agency Ethics Official may

authorize an exception, in writing, to the policy in FAR 3.601 and 3503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, section 27 of the Office of Federal Procurement Policy Act, or Commission regulations in the "Employee Code of Conduct". The Director, Office of Executive Administration shall consult with the cognizant Bureau or Staff Director who originated the request and with the General Counsel before authorizing any exceptions.

(b) This subpart does not apply to subcontracts, that is, agreements to undertake part of the work as an independent contractor. However, where subcontracts essentially create an "employer-employee" relationship between the Commission and the subcontractors, the subpart shall apply. In determining whether such a relationship exists, the contracting officer shall generally be guided by the standards of Chapter 304, Subchapter 1-4 of the "Federal Personnel Manual" in distinguishing between employees and independent contractors.

**3503.603 Responsibilities of the contracting officer.**

Before awarding a contract, the contracting officer shall obtain an authorization under 3503.602 for any of the reasons stated in FAR 3.603.

**3503.670 Exclusions.**

Former or current Commission employees who participated personally and substantially in the conduct of any Commission procurement of supplies or services, including those who were responsible for reviewing and approving the award, modification, or extension of any contract for such procurement, are excluded from the 365 calendar day "before submission of an offer" time period specified in 3503.601 (a) and (b). Instead, the time period for such employees shall be two years after the last date the employee participated personally and substantially in the conduct of any Commission procurement of supplies or services, or personally reviewed and approved the award, modification, or extension of any contract for such procurement. This two-

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year prohibition applies irrespective of whether the contract being sought is on a competitive or noncompetitive basis.

**PART 3504—ADMINISTRATIVE MATTERS**

**Subpart 3504.6—Contract Reporting**

Sec.  
3504.602 Federal Procurement Data System.  
3504.903 Procedures.

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

**Subpart 3504.6—Contract Reporting**

**3504.602 Federal Procurement Data System.**

(b) As indicated in the FPDS Reporting Manual, the Commission is exempt

from the reporting requirements of the Federal Procurement Data System, except for the procurement data that is required to be provided in accordance with Public Law 96-39 (Trade Agreements Act of 1979) as prescribed by OFPP Policy Letter 80-8 (as amended).

[55 FR 7640, Mar. 2, 1990]

**3504.903 Procedures.**

The Commission will report the information required under FAR 4.902(b) directly to the IRS.

[55 FR 7640, Mar. 2, 1990]

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

### PART 3505—PUBLICIZING CONTRACT ACTIONS

Sec.

3505.000 Scope of part.

#### Subpart 3505.2—Synopsis of Proposed Contract Actions

3505.202 Exceptions.

#### Subpart 3505.5—Paid Advertisements

3505.502 Authority.

3505.503 Procedures.

3505.503-70 Authorization.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7640, Mar. 2, 1990, unless otherwise noted.

#### **3505.000 Scope of part.**

This part implements FAR part 5 and provides Commission policies and procedures for publicizing contract opportunities, and provides for an additional exception to the requirements for use of "Commerce Business Daily" notices.

#### Subpart 3505.2—Synopsis of Proposed Contract Actions

#### **3505.202 Exceptions.**

(a)(13) The contract action is one for which participation in the acquisition will be limited to sources in Panama pursuant to the conditions prescribed in 3570.102(e). The Procurement Executive will monitor and maintain a record of proposed contract actions that are exempt from the notice requirements of FAR 5.201 by operation of this exception.

#### Subpart 3505.5—Paid Advertisements

#### **3505.502 Authority.**

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the HCA or designee.

#### **3505.503 Procedures.**

(a) *General.* When there is a reasonable probability that supplies or services (including construction) are available in Panama that are comparable in quality and price to those which may be obtained from other sources, and when local advertising is reasonably practical, the contracting officer shall request authorization from the HCA or designee to advertise the procurement action within the appropriate Panamanian market. The request for authorization shall include—

(1) A description of the proposed procurement action and the supplies or services to be procured;

(2) A description of how the determination was made that the Panamanian preference may apply; and

(3) A summary of how the appropriate advertising market was identified.

#### **3505.503-70 Authorization.**

The HCA or designee shall review the request for authorization of paid advertising and, if concurring, shall grant authorization in writing to the contracting officer to proceed. The written authorization shall specify any limitations on the advertising that are deemed appropriate. The HCA shall furnish a copy of each such authorization to the Procurement Executive.

### PART 3506—COMPETITION REQUIREMENTS

Sec.

3506.000 Scope of part.

#### Subpart 3506.3—Other Than Full and Open Competition

3506.300 Scope of subpart.

3506.302-4 International agreement.

3506.303 Justifications.

3506.303-1 Requirements.

3506.303-2 Content.

3506.304 Approval of the justification.

3506.304-70 Class justifications.

#### Subpart 3506.5—Competition Advocate

3506.501 Requirement.

## Panama Canal Commission

3506.304

**AUTHORITY:** 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

**SOURCE:** 55 FR 7640, Mar. 2, 1990, unless otherwise noted.

### **3506.000 Scope of part.**

This part implements FAR part 6 and prescribes Commission policies and procedures related to competition requirements.

### **Subpart 3506.3—Other Than Full and Open Competition**

#### **3506.300 Scope of subpart.**

This subpart provides guidance on:

(a) The application of the Panama Canal Treaty of 1977 between the United States and Panama as an exemption to the requirement for full and open competition, and

(b) The preparation and approval of individual and class Justifications for Other Than Full and Open Competition (JOFOC's).

#### **3506.302-4 International agreement.**

(a) *Authority.* Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 establishes that the Commission shall give preference to Panamanian supplies and services in its procurement activities. Such preference is understood to mean that if supplies or services (including construction) of comparable quality and price are available when required and can be obtained from sources both within and without the Republic of Panama, preference shall be afforded to those sources within the Republic of Panama to the maximum extent possible. When choosing between goods from sources within the Republic of Panama, preference shall be given to those with a larger percentage of components of Panamanian origin. This is not intended to require the purchase of Panamanian supplies and services, as defined herein, where superior quality or lower prices are available from other sources. Part 3570 sets forth specific guidance and policy with respect to the Commission's implementation of Article IX.

(c) *Limitations.* Solicitations above the small purchase limitation that are intended for exclusive acquisition from

sources in Panama shall be supported by a class or individual determination and findings as required by 3570.102(e).

#### **3506.303 Justifications.**

##### **3506.303-1 Requirements.**

(c) The scope of the actual procurement shall not exceed the scope of the proposed procurement cited in the JOFOC. If a change to the contract exceeds this limitation, the contract change shall not be consummated until an amended JOFOC has been approved.

(d) When contract actions are subject to the Agreement on Government Procurement and the authority of FAR 6.302-3(a)(2)(i) or 6.302-7 is being cited as the basis for not providing full and open competition, a copy of the justification shall be forwarded to the Procurement Executive as the point of contact with the Office of the United States Trade Representative.

##### **3506.303-2 Content.**

In addition to the requirements of FAR 6.303-2, the justification shall include—

- (a) The type of contract;
- (b) A statement of delivery requirements;
- (c) The total estimated dollar value, including options, for the acquisitions covered by the justification; and
- (d) A copy of the approved Acquisition Plan when the acquisitions meet the criteria for a written Acquisition Plan under subpart 3507.1.

##### **3506.304 Approval of the justification.**

(a) Except as noted at FAR 6.304(b), the approval of a justification for other than full and open competition shall be in writing and at the levels given below—

(1) For a proposed contract not exceeding \$100,000, the HCA is the approval authority. This approval is not required when the contract is one of those cited in FAR 6.304(a)(1) (i) through (iv).

(2) For a proposed contract over \$100,000, but not exceeding \$1,000,000, the Competition Advocate is the approval authority.

(3) For a proposed contract over \$1,000,000, but not exceeding \$5,000,000,

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the Procurement Executive is the approval authority.

(4) For a proposed contract over \$5,000,000, the Administrator is the approval authority.

(b) Contracting officers shall consult with the Competition Advocate prior to submitting any justification for approval pursuant to paragraph (a) of this section.

**3506.304-70 Class justifications.**

(a) Class justifications shall be approved in the same manner as individual justifications. To determine the approval level for a class justification, the aggregate estimated dollar value of all actions contemplated for one year shall be used to establish the appropriate dollar threshold for approval.

(b) The following are examples of appropriate class justifications:

(1) A basic ordering agreement (BOA) including all orders to be issued under the BOA for the term of the BOA;

(2) Contracts to be awarded to more than one contractor to provide Government-furnished property for assembly into an end item, in which case the circumstances of the class justification must justify all the contracts proposed under the justification.

(c) Requests for approval at any level must be submitted to the approval authority before release of the solicitation. The solicitation shall not be released until the justification is approved in writing (but see FAR 6.303-1(e)).

(d) The Procurement Executive shall maintain a list of products, materials, and services that have been granted a class justification for exclusive acquisition from sources in Panama (see 3506.302-4(c)).

**Subpart 3506.5—Competition Advocate**

**3506.501 Requirement.**

The Administrator shall designate in writing one Competition Advocate who shall serve as the agency and procuring activities competition advocate for all Commission acquisitions.

48 CFR Ch. 35 (10-1-96 Edition)

**PART 3507—ACQUISITION PLANNING**

**Subpart 3507.1—Acquisition Plans**

Sec.  
3507.103 Agency-head responsibilities.

**Subpart 3507.3—Contractor Versus Government Performance**

3507.301 Policy.

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

**Subpart 3507.1—Acquisition Plans**

**3507.103 Agency-head responsibilities.**

(c)(1) Formal acquisition planning provided at FAR subpart 7.1 is primarily designed for complex and costly acquisitions. However, the disciplines of the prescribed planning process are useful to all acquisitions, even if on a less formal basis.

(2) Written acquisition plans shall be prepared for—

(i) All development (see FAR 35.001) acquisitions whose estimated contractual cost is \$1,000,000 or more annually;

(ii) Supply, service, and construction acquisitions whose estimated contractual cost is \$3,000,000 or more for any fiscal year. Excluded are repetitive requirements-type and fuel contracts.

(d) The Acquisition Plan (AP) shall include all subsystems, Government-furnished property, major component contractual actions, and all other contracts which have a significant effect on the total program.

(f) The planner for acquisitions requiring a formal, written plan shall be the program manager or other official having overall responsibility for the program concerned.

(g)(1) The planner shall obtain the written concurrence of the appropriate contracting officer for each acquisition plan.

(2) The Head of the Contracting Activity shall review and approve the acquisition plan and ensure that (i) the objectives of the AP are realistic and achievable, and (ii) solicitations and contracts are appropriately structured to equitably distribute the technical, financial, and business risks, considering the phase of the acquisition, the

technical requirements, and business and legal constraints.

(3) Acquisition plans shall be furnished by the cognizant HCA to the Procurement Executive.

(j) When a need is urgent enough to require an unusually compressed delivery or performance schedule, and the preparation of a detailed written AP would interfere with the successful meeting of that schedule, the Procurement Executive may waive appropriate requirements of FAR subpart 7.1 and this subpart 3507.1. The waiver shall be in writing and shall specifically designate those requirements that are waived.

[55 FR 7641, Mar. 2, 1990]

### Subpart 3507.3—Contractor Versus Government Performance

#### 3507.301 Policy.

(a) For the purposes of OMB Circular No. A-76, a commercial source is defined as “a business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia or the Commonwealth of Puerto Rico, which provides a commercial product or service.” Accordingly, by virtue of the Commission’s location in the Republic of Panama, FAR subpart 7.3 is not applicable to the Panama Canal Commission because commercial services would have to be contracted out to sources located in Panama. Commission policy regarding commercial services to be contracted out to sources in Panama is set forth in paragraph (b) of this section.

(b) Commercial work and services shall be contracted out when there are available reliable local contractors and the expected cost is beneficial to the Commission. However, when commercial work/service to be done requires skills that the Commission should have and/or develop, then a careful evaluation shall be made before such work/service is contracted outside the agency. The cognizant Head of the Contracting Activity shall be the approving official for commercial work and services to be contracted out pursuant to this policy.

[55 FR 7641, Mar. 2, 1990]

## PART 3508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

3508.001 Priorities for use of Government supply sources.

### Subpart 3508.4—Ordering from Federal Supply Schedules

3508.404 Using schedules.

3508.404-1 Mandatory use.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7642, Mar. 2, 1990, unless otherwise noted.

#### 3508.001 Priorities for use of Government supply sources.

(a) Under Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, the Panama Canal Commission is required under certain conditions to give preference, to the maximum extent possible, to procuring supplies and services obtainable in Panama (see 3506.302-4(a), subpart 3525.8, and part 3570). Therefore, when supplies or services are to be procured from sources in Panama under the preference requirement of Article IX, the mandatory use of sources for a like item of supply or service, as required by FAR part 8, shall not be applicable.

### Subpart 3508.4—Ordering from Federal Supply Schedules

#### 3508.404 Using schedules.

##### 3508.404-1 Mandatory use.

When supplies or services are procured from sources in Panama under the preference requirement of Article IX, as stated in 3508.001(a), the mandatory use of a Federal Supply Schedule for a like item of supply or service shall not be applicable. When a procurement is not made under the Panamanian preference of Article IX, and delivery or performance is to be made in Panama, the mandatory supply schedule should be carefully evaluated for the following exceptions to mandatory use:

(d) *Geographic coverage.* Each Federal Supply Schedule delineates the specific

geographic area for which it is mandatory for use. The geographic area applies to the location where final delivery of the supplies is to be made, or the service to be performed, and not to the location of the ordering office. In most cases, the Republic of Panama will not be within the geographic limitations of the schedule and mandatory use will not be applicable. The mandatory use provisions of FAR 8.4 and 41 CFR 101-26.4 are applicable to Commission offices located in the United States when ordering supplies or services to be delivered or performed in the United States for their own use.

(e) *Lower prices for identical items.* The Commission may purchase products from any source pursuant to the conditions set forth in FAR 8.404-1(e).

## PART 3509—CONTRACTOR QUALIFICATIONS

Sec.

3509.000 Scope of part.

### Subpart 3509.1—Responsible Prospective Contractors

3509.104-3 Application of standards.

3509.106 Preaward surveys.

3509.106-70 Professional type services preaward surveys.

### Subpart 3509.2—Qualification Requirements

3509.202 Policy.

3509.206 Acquisitions subject to qualification requirements.

3509.206-1 General.

### Subpart 3509.4—Debarment, Suspension and Ineligibility

3509.400 Scope of subpart.

3509.403 Definitions.

3509.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

3509.405 Effect of listing.

3509.405-1 Continuation of current contracts.

3509.405-2 Restrictions on subcontracting.

3509.406 Debarment.

3509.406-1 General.

3509.406-2 Causes for debarment.

3509.406-3 Procedures.

3509.406-70 Settlement.

3509.406-71 Voluntary exclusion.

3509.407 Suspension.

3509.407-2 Causes for suspension.

3509.407-3 Procedures.

3509.407-70 Settlement.

3509.407-71 Voluntary exclusion.

3509.470 Special notice.

3509.471 Equal application.

### Subpart 3509.5—Organizational Conflicts of Interest

3509.500 Scope of subpart.

3509.502 Applicability.

3509.503 Waiver.

3509.504 Contracting officer responsibilities.

3509.506 Information sources.

3509.507 Procedures.

3509.508 Solicitation provision and contract clause.

3509.508-1 Solicitation provision.

3509.508-2 Contract clause.

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

SOURCE: 55 FR 7642, Mar. 2, 1990, unless otherwise noted.

### 3509.000 Scope of part.

This part implements FAR part 9 and provides Commission policy and procedures pertaining to: contractor's responsibility; debarment, suspension, and ineligibility; qualified products; and organizational conflicts of interest.

### Subpart 3509.1—Responsible Prospective Contractors

#### 3509.104-3 Application of standards.

(c) *Satisfactory performance record.* If the contracting officer invokes the presumption of nonresponsibility required by FAR 9.104-3(c), the contracting officer shall give notice, together with the reasons for invoking the presumption, to the Procurement Executive.

#### 3509.106 Preaward surveys.

#### 3509.106-70 Professional type services preaward surveys.

(a) Generally, preaward surveys are not performed for acquisition of professional type services such as those provided by medical doctors, lawyers or other licensed and/or regulated professions.

(b) To assist in making a determination of responsibility for professional type services, the types of information listed below shall be obtained from the offeror when applicable:

(1) Organizational structure and plan contemplated to accomplish the service;

(2) Summary of experience in performing the same or similar service;

(3) Resumes of key personnel with particular emphasis on academic accomplishments pertinent to the service to be performed;

(4) Evidence of professional liability insurance, or evidence such insurance can be obtained;

(5) Membership in professional organizations;

(6) Information on pertinent state and local licenses; and

(7) Information on the firm or key individuals that reflect their status or professional recognition in their field of endeavor, such as awards and published articles in professional journals or magazines.

(c) When the statement of work includes a review of credentials by the requiring activity, this review should be considered a part of the preaward survey, and other information requested from the offeror should be minimized.

### Subpart 3509.2—Qualification Requirements

#### 3509.202 Policy.

(a)(1) The contracting officer shall ensure that the written justification required by FAR 9.202(a)(1) is prepared prior to establishing a requirement for testing or other quality assurance demonstration that must be completed by an offeror before the offeror is awarded a contract.

#### 3509.206 Acquisitions subject to qualification requirements.

##### 3509.206-1 General.

(b) The contracting officer is designated to make the determination required by FAR 9.206-1(b).

### Subpart 3509.4—Debarment, Suspension and Ineligibility

SOURCE: 61 FR 3846, Feb. 2, 1996, unless otherwise noted.

#### 3509.400 Scope of subpart.

This subpart supplements, and shall be applied in conformity with, FAR subpart 9.4.

#### 3509.403 Definitions.

*Debarring official* means the Administrator of the Panama Canal Commission (hereinafter "Commission"). In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed debarment due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the debarring official.

*Fact-finding official* means a person not employed by the Commission or any agency of the U.S. Government retained at Commission expense to conduct fact-finding under this subpart. The individual must have no prior knowledge of the particular subject matter and no conflict of interest with respect to any of the parties involved in the debarment or suspension action. He shall have knowledge of the laws and regulations governing the federal procurement system, and shall have experience in receiving evidence and formulating findings of fact.

*Suspending official* means the Commission Administrator. In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed suspension due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the suspending official.

#### 3509.404 List of parties excluded from Federal procurement and non-procurement programs.

(c) The Commission Procurement Executive (hereinafter "PE") shall perform the actions required by FAR 9.404(c).

#### 3509.405 Effect of listing.

The PE is the designee of the agency head for the purposes of FAR 9.405(a) and (d)(2) and (3) and may, upon the written recommendation of the pertinent Head of the Contracting Activity (hereinafter "HCA"), make the determinations referenced therein.

**3509.405-1 Continuation of current contracts.**

The PE is the designee of the agency head for the purposes of FAR 9.405-1(a) and (c) and may, upon the written recommendation of the pertinent HCA, take the actions referenced therein.

**3509.405-2 Restrictions on sub-contracting.**

(a) The PE is the designee of the agency head for the purposes of FAR 9.405-2(a) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

**3509.406 Debarment.****3509.406-1 General.**

(c) The PE is the designee of the agency head for the purposes of FAR 9.406-1(c) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

**3509.406-2 Causes for debarment.**

In addition to the causes listed in FAR 9.406-2, the use of a Panama Canal Commission employee or a member of the Commission's Board of Directors as an agent or advocate for a Commission contractor, or prospective contractor, shall be a cause for debarment.

**3509.406-3 Procedures.****(a) Investigation and referral.**

(1)(i) Any Commission official or employee who suspects or has knowledge of any conduct, statement, act, or omission of, or attributable to, a Commission contractor or a potential Commission contractor which could justify debarment under FAR subpart 9.4 or this subpart shall immediately report this information to the Commission General Counsel (hereinafter "GC") or to the appropriate contracting officer.

(ii) Any Commission official or employee who suspects or has knowledge that a debarred individual or company has reestablished itself under a new name shall immediately report this information to the GC or to the appropriate contracting officer.

(2) When the GC receives such information he shall refer the matter to the appropriate contracting officer for investigation and shall notify the PE and the pertinent HCA. When the contract-

ing officer receives such information he shall notify the PE and the pertinent HCA.

(3) The contracting officer shall, in coordination with the pertinent HCA, promptly investigate the matter, assemble all relevant information and prepare a written report containing all available evidentiary material, including copies of indictments and conviction notices when applicable, and the names of the owners and officers, as well as any affiliates, of the contractor in question. The written report shall include a recommendation whether a debarment action should be commenced and, if so, shall identify the causes for debarment, see FAR 9.406-2 and 3509.406-2 of this subpart, and identify each company and individual, including divisions of companies and affiliates, which the contracting officer recommends should be specifically named in the action.

(4) The contracting officer shall submit his report to the pertinent HCA and a copy thereof to the PE and the GC. The HCA shall study the report and promptly advise the PE, in writing, whether or not he concurs in the contracting officer's recommendation and shall explain the reasons for his concurrence or nonconcurrence.

(5) The PE shall study the contracting officer's report and the recommendation of the HCA. If the HCA and the PE agree that a debarment action should not be commenced, the PE shall so inform the debarring official and shall prepare a memorandum for record describing and closing the matter. If, however, either the HCA or the PE recommend that a debarment action should be commenced, the PE shall forward the contracting officer's report to the debarring official, together with the recommendation of the HCA as well as the PE's own written recommendation.

**(b) Decisionmaking process.**

(1) If the debarring official, after reviewing the contracting officer's report and the recommendations of the HCA and the PE, considering fully the provisions of FAR 9.402 and 9.406-1(a), and consulting with the GC, determines there is a reasonable basis to commence a debarment action, the debarring official shall instruct the PE to

sign and send to each specifically named company, individual or affiliate to which the action is to apply, via certified mail, return receipt requested, either:

(i) An informal notice of the Commission's intention to propose debarment, see 3509.406-3(b)(2) of this subpart; or

(ii) A formal notice of the Commission's proposal to debar under FAR 9.406-3(c).

(2) An informal notice of the Commission's intention to propose debarment shall advise the addressee, in writing, of the following:

(i) The issuance under FAR 9.406-3(c) of a formal notice of proposal to debar the addressee is seriously being considered by the Commission;

(ii) The basic factual reasons for the contemplated debarment;

(iii) The causes relied upon under FAR 9.406-2 and 3509.406-2 of this subpart;

(iv) The Commission's procedures governing the debarment process;

(v) The addressee's right to reply to the PE in writing within 21 calendar days of receipt of the informal notice, and show cause why the Commission should not issue, to the addressee, a formal notice of proposal to debar under FAR 9.406-3(c) for the reasons and causes cited by the Commission;

(vi) That, if the PE does not receive a reply from the addressee to the informal notice within 21 calendar days of the addressee's receipt of the informal notice, the Commission will issue to the addressee a formal notice of proposal to debar;

(vii) The effect of the issuance of a formal notice of proposal to debar;

(viii) The potential effect of an actual debarment; and

(ix) That, while the Commission will carefully consider the content of a timely reply to the informal notice, the Commission reserves the right to issue a formal notice of proposal to debar without additional discussion or correspondence.

(3) The PE shall study the timely reply of an addressee to an informal notice and shall forward the reply to the GC and the debarring official with the PE's evaluation and recommendation.

(4) If, after reviewing a timely reply to an informal notice, as well as the views of the PE and the GC, the debarring official determines, considering fully the provisions of FAR 9.402 and 9.406-1(a), that a formal debarment action should commence, the debarring official shall instruct the PE to sign and send a formal notice of proposal to debar to the addressee.

(c) *Notice of proposal to debar.* In addition to the matters listed at FAR 9.406-3(c), a formal notice of proposal to debar shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the proposed debarment.

(d) *Debarring official's decision.*

(1) A submission in opposition to the Commission's formal notice of proposal to debar presented by a contractor, or any named individual or affiliate, shall include information and argument in opposition to the proposed debarment, including any additional specific information or documents that raise a genuine dispute over material facts. The submission shall be addressed to the PE.

(2) If a timely submission in opposition to a formal notice of proposal to debar is not presented by a named contractor, individual or affiliate to whom a formal notice was sent, the PE shall, with respect only to each such contractor, individual or affiliate that failed to present a timely submission, study all the information in the administrative record and shall forward the entire record to the debarring official with an evaluation and recommendation whether to debar the nonresponding contractor, individual or affiliate and, if so, for what period of time.

(3) If a timely submission in opposition to a formal notice of proposal to debar is submitted in actions based upon a conviction or civil judgment, the PE shall evaluate all the information in the administrative record, including the submission in opposition, and shall forward these materials to the debarring official with a recommendation whether to debar and, if so, for what period of time.

(4)(i) If a timely submission in opposition to a formal notice of proposal to debar is presented in actions not based

upon a conviction or civil judgment, the PE shall evaluate the formal notice of proposal to debar and the submission in opposition and shall determine, with the advice of the GC, if the submission raises a genuine dispute over any facts material to the proposed debarment. If it does not, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(ii) If, however, the PE determines, in consultation with the GC, that a timely submission in opposition to a formal notice of proposal to debar in actions not based upon a conviction or civil judgment raises a genuine dispute over any fact material to the proposed debarment, the PE shall so advise the contractor, named individual or affiliate, and shall inquire whether a fact-finding hearing is desired. If a fact-finding hearing is not requested by the contractor, named individual or affiliate, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(iii) If a fact-finding hearing is requested, the PE shall appoint a fact-finding official to whom all matters involving disputed material facts shall be referred. The PE will provide the fact-finding official with a copy of the entire administrative record including the submission in opposition. The fact-finding official shall study the Commission's notice(s) of proposal to debar and the submission(s) in opposition, and shall identify specifically the material facts in genuine dispute and so advise the pertinent contractor, named individual or affiliate, as well as the Commission's designated advocate in the Office of General Counsel. A fact-finding hearing shall be scheduled and conducted by the fact-finding official, and shall take place in a Commission facility in Panama unless the fact-finding official determines that fundamental fairness compels the use of another location. The rules governing the fact-finding hearing shall be established by the fact-finding official but shall con-

form fully with FAR 9.406-3(b)(2) and (d)(2) and (3).

(5) The fact-finding official shall present written findings of fact and the transcribed record of the hearing, if made, to the debarring official within 21 calendar days from his receipt of the transcript or from the final day of the hearing if no transcript is ordered. The findings shall resolve each material fact previously determined to be in genuine dispute based on a preponderance of the evidence presented.

(6) Upon receiving the complete administrative record and the evaluation and recommendation of the PE or, if there was a fact-finding hearing, upon receiving the hearing record and the findings of fact of the fact-finding official and the evaluation and recommendation of the PE, the debarring official shall, considering fully the provisions of FAR 9.402 and 9.406-1(a), make a final decision whether to impose debarment. If debarment is chosen, the debarring official shall also determine the period of debarment.

(e) *Notice of debarring official's decision.* The debarring official shall promptly notify the contractor and any named individual or affiliate of the final decision in writing by certified mail, return receipt requested.

#### **3509.406-70 Settlement.**

(a) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to perform, accomplish or implement such remedial measures or mitigating factors as are listed at FAR 9.406-1(a). The contractor, individual or affiliate shall also agree that its failure to observe any term or condition of the agreement shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a settlement agreement if the proposed debarment is based on a

conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

**3509.406-71 Voluntary exclusion.**

(a)(1) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to voluntarily refrain, for a specified period of time, from attempting to obtain, and from entering into, any contract, purchase agreement or other form of contractual relationship, regardless of dollar amount, with, as the debarring official may determine, either: (i) the Commission; or (ii) the Commission and one or more, or all, other agencies, departments or entities of the U.S. Government.

(2) A voluntary exclusion will not be reported to the GSA nor appear in the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs," and if the contractor, individual or affiliate is currently listed due to a Commission notice of proposal to debar the PE will advise the GSA of the voluntary exclusion and request the immediate cessation of the listing. The contractor, individual or affiliate shall agree that its failure to observe any term or condition of the voluntary exclusion shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a voluntary exclusion agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406-2(a).

**3509.407 Suspension.**

**3509.407-2 Causes for suspension.**

In addition to the causes listed in FAR 9.407-2, the cause for debarment identified in 48 CFR (PAR) 3509.406-2 also applies to suspension actions.

**3509.407-3 Procedures.**

(a) The procedures set forth in 48 CFR (PAR) 3509.406-3 for debarment also apply, insofar as they are compatible with the procedures set forth in FAR 9.407-3, to suspension actions except those procedures identified in paragraph (b) of this subsection.

(b) The following procedures in 48 CFR (PAR) 3509.406-3 do *not* apply to suspension actions: 3509.406-3(b)(1)(i), 3509.406-3(b)(2) through (4) and 3509.406-3(c).

(c) *Notice of suspension.* In addition to the matters listed at FAR 9.407-3(c), in actions not based on an indictment, a notice of suspension shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the suspension.

**3509.407-70 Settlement.**

Where a suspension is being considered, the suspending official may enter into a settlement agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-70.

**3509.407-71 Voluntary exclusion.**

Where a suspension is being considered, the suspending official may enter into a voluntary exclusion agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406-71.

**3509.470 Special notice.**

The Commander in Chief, United States Southern Command, shall be notified by the Procurement Executive of the issuance of any Commission notice of proposal to debar and of any debarment or suspension decision made by the debarring or suspending official.

**3509.471 Equal application.**

These procedures for debarment and suspension apply equally to all firms, individuals and affiliates doing business with the Panama Canal Commission regardless of their nationality, residence or location.

### Subpart 3509.5—Organizational Conflicts of Interest

#### 3509.500 Scope of subpart.

This subpart establishes Commission policy and procedures for identifying, evaluating, and resolving organizational conflicts of interest. It is the Commission's policy to avoid, neutralize, or mitigate organizational conflicts of interest. If the Commission is unable to neutralize or mitigate the effects of a potential conflict of interest, it will disqualify the prospective contractor or will terminate the contract when potential or actual conflicts are identified after award.

#### 3509.502 Applicability.

This subpart applies to all Commission contracts except agreements with other Federal agencies.

#### 3509.503 Waiver.

The Commission's General Counsel is designated as the authority to waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Commission's interest. Any request for waiver must be in accordance with FAR 9.503.

#### 3509.504 Contracting officer responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by the contracting officer's own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Commission. In that case, the contracting officer may, with the

approval of the cognizant Head of the Contracting Activity, set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible.

(d) The contracting officer shall, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract, including disclosure of such conflicts of interest with respect to proposed subcontractors.

#### 3509.506 Information sources.

(a) *Disclosure.* At the request of the contracting officer, prospective Commission contractors responding to solicitations or submitting unsolicited proposals shall provide information to the contracting officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraphs (a)(1) or (2) of this section.

(1) If the prospective contractor is not aware of any information bearing on the existence of any organizational conflict of interest, the contractor shall so certify.

(2) Prospective contractors not certifying in accordance with paragraph (a)(1) of this section must provide a disclosure statement which describes concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed and bearing on whether they, including their chief executives, directors, or any proposed consultant or subcontractor, may have a potential organizational conflict of interest.

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations requesting the

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information in paragraph (a) of this section, the Commission will consider any inadvertent failure to provide disclosure certification as a "minor informality" (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

(c) *Exception.* When the contractor has previously submitted a conflict of interest certification or disclosure for a contract, only an update of such statement is required when the contract is modified.

**3509.507 Procedures.**

(a) The contracting officer shall document in writing the resolution of any potential or actual conflicts of interest identified. This documentation shall be reviewed and approved by the General Counsel prior to award. If the organizational conflict of interest cannot be resolved, the contracting officer shall disqualify the prospective contractor from receiving the contract award.

(b) The General Counsel shall review and make the final decision required at FAR 9.507(c)(4) on any contractor request for higher review of the contracting officer's decision.

**3509.508 Solicitation provision and contract clause.**

**3509.508-1 Solicitation provision.**

The contracting officer shall insert the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure in solicitations that in the contracting officer's judgment may be susceptible to organizational conflicts of interest.

**3509.508-2 Contract clause.**

The contracting officer shall insert the clause at 3552.209-71, Organizational Conflict of Interest, in solicitations and contracts that will include the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure.

**PART 3510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS**

Sec.  
3510.001 Definitions.

3510.004 Selecting specifications or descriptions for use.

3510.004-70 Brand name or equal purchase descriptions.

3510.007 Deviations.

3510.011 Solicitation provisions and contract clauses.

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

Source: 55 FR 7644, Mar. 2, 1990, unless otherwise noted.

**3510.001 Definitions.**

*Salient characteristics* mean those particular characteristics that specifically describe the essential physical and/or functional features of a brand name product. They are those essential physical and/or functional features which are identified in the specifications as a mandatory requirement which a proposed "equal" product must possess in order for the product to be considered responsive. The term excludes those physical and/or functional features of a brand name product that:

- (a) Are not essential to the needs of the Commission, or
- (b) Do not affect the suitability of the product for its intended use.

**3510.004 Selecting specifications or descriptions for use.**

**3510.004-70 Brand name or equal purchase descriptions.**

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only under the conditions indicated in FAR 10.004(b)(2) and (3) and shall be in accordance with this subsection. The office initiating the "brand name or equal" purchase request is responsible for documenting to the contracting officer's satisfaction that the conditions for its use are valid. Where feasible, all known acceptable brand name products should be referenced.

(b) The words "or equal" should not be added when the contracting officer has determined, with the concurrence of the General Counsel and the signed approval of the cognizant HCA, that only a particular product meets the essential requirements of the Commission.

(c) Brand name or equal purchase descriptions shall include, in addition to those characteristics set forth in FAR

10.004(b)(1) to the extent they are applicable, the following type of information to clearly identify the specific item named by brand(s) and its salient characteristics:

(1) Complete common generic identification of the item required;

(2) Applicable model, make, or catalog number for each brand name product referenced, and identity, if applicable, of the commercial catalog in which it appears;

(3) Name of manufacturer, producer, or distributor of each brand name product reference (and address if company is not well known); and

(4) All salient characteristics of the brand name product or products which have been determined by the initiating office, with the concurrence of the contracting officer, to be essential to meet the Commission's minimum physical and/or functional requirements. The purchase description shall state or otherwise indicate that the salient characteristics are mandatory features which proposed equal products must possess in order to be considered responsive.

(d) Except as provided in paragraph (e) of this subsection, when a brand name or equal purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation schedule for completion by the offeror:

To be completed by offeror:

Manufacturer's Name: \_\_\_\_\_

Manufacturer's Address: \_\_\_\_\_

Brand Name of Product (if any): \_\_\_\_\_

NOTE: Offerors are cautioned and advised to read provision 3552.210-70, Brand Name Products or Equal, located elsewhere in this solicitation, prior to completing the above. As indicated therein, offerors proposing to furnish an "equal" product must furnish all descriptive material necessary to determine the acceptability of such product.

(e) Where component parts of an end item are described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 3552.210-70 to such component parts would be impracticable, the requirements of paragraph (d) of this subsection and 3510.011(h) shall not apply with respect to such component parts. However, if the provision is included in the solicitation for other reasons, there

shall also be included in the solicitation a statement to identify either the component parts (described by brand name or equal purchase descriptions) to which the provision applies or those to which it does not apply. Depending upon whether the former or latter alternative is used, the statement should be substantially as follows:

The provision 3552.210-70, Brand Name Products or Equal, located elsewhere in this solicitation, applies to the following component parts: (List the component parts to which the provision applies.)

or

The provision 3552.210-70, Brand Name Products or Equal, located elsewhere in this solicitation, does not apply to the following component parts: (List the component parts to which the provision does not apply.)

This paragraph (e) also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of the end item.

(f) When considered appropriate by the contracting officer, solicitations incorporating brand name or equal purchase descriptions may require the submission of offer samples in the case of offerors proposing to furnish "equal" products; such samples shall not be required from offerors who offer brand name products referenced in purchase descriptions.

(g) Offers proposing to furnish products other than those specifically referenced by brand name shall be considered for award when the contracting officer determines under provision 3552.210-70 that the offered products meet the salient characteristics identified in the purchase description. Offers shall not be rejected as nonresponsive for failure of the product to equal a characteristic of a brand name product if such characteristic was not specified as a salient characteristic in the brand name or equal purchase description. However, if it is clearly established that the unspecified characteristic is essential to the intended use, the solicitation is defective and no award shall be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth all salient characteristics.

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(h) The brand name or equal policies and procedures in this subsection may be used in small purchase acquisitions to the extent that they are applicable and practicable.

(i) This subsection is not applicable to construction contracts since the use of equal equipment, materials, articles, or processes are covered by FAR clause 52.236-5, Material and Workmanship.

**3510.007 Deviations.**

Heads of Contracting Activities are designated to authorize the deviations permitted under FAR 10.007 and are responsible for ensuring that the actions required by FAR 10.007 are accomplished.

**3510.011 Solicitation provisions and contract clauses.**

(h) The contracting officer shall insert the provision at 3552.210-70, Brand Name Products or Equal, in solicitations that call for the delivery of a brand name or equal product, selecting the language that is appropriate for (1) invitation for bids, or (2) requests for proposals, as parenthetically indicated in the provision. (However, see 3510.004-70(e) regarding the applicability of the provision to component parts of an end item and to accessories related to an end item.)

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 3513—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

3513.000 Scope of part.

#### Subpart 3513.1—General

3513.105 Small business-small purchase set-asides.

3513.107 Solicitation and evaluation of quotations.

#### Subpart 3513.2—Blanket Purchase Agreements

3513.201 General.

3513.203 Establishment of Blanket Purchase Agreements.

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3513.204 Purchases under Blanket Purchase Agreements.

#### Subpart 3513.5—Purchase Orders

3513.505 Purchase order and related forms.

3513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

3513.505-70 Purchase requisition.

3513.505-71 Division Purchase Order.

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

SOURCE: 54 FR 7645, Mar. 2, 1990, unless otherwise noted.

#### **3513.000 Scope of part.**

This part implements and supplements FAR part 13 and provides Commission policies and procedures relating to small business-small purchase set-asides, blanket purchase agreements, and purchase order forms.

#### Subpart 3513.1—General

##### **3513.105 Small business-small purchase set-asides.**

(a) The requirements of Public Law 95-507 relating to setting aside acquisitions of supplies or services with an anticipated dollar value of \$25,000 or less do not apply to such purchases when delivery or performance is to be made to or within the Republic of Panama. The requirements do apply to Commission offices located in the United States for the purchase of supplies or

services for their own use and not for delivery or performance in Panama.

##### **3513.107 Solicitation and evaluation of quotations.**

(a) *Forms.* (4) The following Commission forms may be used by the Logistical Support Division in lieu of Standard Form 18 for requesting small purchase price quotations:

(i) *Panama Canal Form No. 1821, Request For Quotation.* This form may be used by the Purchasing and Contracts Branch for the solicitation of nonstock items and services. It must be used in conjunction with forms 7071 and 7074 (see paragraph (a)(4)(iv) of this section).

(ii) *Panama Canal Form No. 1822, Request For Quotation Continuation.* This form may be used with Panama Canal Form No. 1821 when additional space is needed.

(iii) *Panama Canal Form No. 2008, This Is A Request For Prices; It Is Not An Order.* This form may be used by the Inventory Management Branch for the solicitation of standard stock items. It must be used in conjunction with forms 7071 and 7074 (see paragraph (a)(4)(iv) of this section).

(iv) *Panama Canal Commission Form 7071, General Contract Clauses And Provisions, Small Purchases; and Panama Canal Commission Form 7074, Information Sheet.* These two forms shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

#### Subpart 3513.2—Blanket Purchase Agreements

##### **3513.201 General.**

(a) Except for the rental of construction equipment, blanket purchase agreements (BPA's) may be established only by contracting officers within the General Services Bureau. The contracting officers authorized to establish BPA's are:

(1) Chief, Inventory Management Branch for acquisition of inventory stocks;

(2) Chief, New Orleans Branch for acquisition of parts in the New Orleans area for the Motor Transportation Division and such other items as may be designated by the General Services Director;

(3) Chief, Construction Division, Engineering and Construction Bureau, for the rental of construction equipment; and

(4) Chief, Purchasing and Contracts Branch for acquisition of supplies or services not covered under paragraphs (a) (1) through (3) of this section.

[55 FR 7645, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

### **3513.203 Establishment of Blanket Purchase Agreements.**

#### **3513.203-1 General.**

(a) Blanket purchase agreements may be established for supplies or services which are readily available and for which their purchase does not require detailed technical specifications, technical inspection, or complex terms and conditions.

(b) Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA shall be permitted to request deliveries. Delivery (call) orders shall usually be made by telephone or in person. Before placing a call order against the BPA, each requirement shall be screened for availability from Commission inventory sources and from the mandatory sources of supply prescribed in FAR part 8. Necessary controls shall be maintained by the person placing the call orders under the BPA to ensure that any limitation stated therein is not exceeded. The BPA identification number shall be specified each time a delivery is requested.

(c) The procedure for establishing and using BPA's is prescribed in the Commission's Financial Systems Manual 14.020, covering BPA's in general, and 14.007, covering BPA's for automotive parts.

### **3513.204 Purchases under Blanket Purchase Agreements.**

(a) Individual call orders under a BPA shall not exceed the dollar limitation specified in the BPA, which limitation shall not exceed the dollar limitations established by the:

(1) Engineering and Construction Director for the rental of construction equipment, and

(2) General Services Director for all other BPA's.

(b) Purchases under BPA's shall be documented on Panama Canal Form No. 3099, Request For Purchase/Call Order.

## **Subpart 3513.5—Purchase Orders**

### **3513.505 Purchase order and related forms.**

#### **3513.505-2 Agency order forms in lieu of Optional Forms 347 and 348.**

The following Commission order forms may be used in lieu of Optional Forms 347 and 348 for the purposes described below:

(a) *Panama Canal Form No. 1010, Purchase Order.* This form may be used by the Inventory Management Branch (1) for the small purchase acquisition of standard stock items, and (2) as a delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(b) *Panama Canal Form No. 1820, Purchase Order.* This form may be used by the Purchasing and Contracts Branch (1) for the small purchase acquisition of non-stock items and services, and (2) as a delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(c) *Panama Canal Form No. 3083, Purchase Order Continuation.* This form may be used with Panama Canal Form No. 1820 when additional space is needed.

(d) *Panama Canal Form No. 3163, Division Purchase Order.* This form may be used by all activities having contracting authority for the decentralized procurement of supplies and services (see 3513.505-71).

(e) *Panama Canal Form No. 3163-MTD, Division Purchase Order.* This form may be used by the Motor Transportation

Division and the New Orleans Branch, Logistical Support Division for purchases of nonstandard stock automotive repair parts that do not exceed dollar amounts established by the General Services Director.

**3513.505-70 Purchase requisition.**

Panama Canal Form No. 1821, Purchase Requisition, shall be used by requiring activities to request purchasing action by the Purchasing and Contracts Branch, Logistical Support Division. The procedure for using purchase requisitions is prescribed in the Commission's Financial Systems Manual 14.010.

**3513.505-71 Division Purchase Order.**

(a) *General.* The Division Purchase Order (DPO), PCC Form No. 3163, may be used by all activities that have contracting authority for the decentralized procurement of supplies and services (see 3501.601(b)). When repetitive purchases within the authorized DPO dollar limitation are made for the same supplies or services, the activity shall request the Chief, Purchasing and Contracts Branch to establish a BPA (see subpart 3513.2). A detailed procedure for the use of the DPO is prescribed in the Commission's Financial Systems Manual 14.005, covering DPO's in general, and 14.007, covering DPO's for automotive parts.

(b) *Responsibilities.* (1) Bureau directors and heads of independent units that use the DPO shall—

(i) Ensure that, whenever practicable, the functions of procurement approval, receipt documentation, and payment approval in the use of a DPO are performed by three separate persons. In no case shall the same person be permitted to perform all three functions.

(ii) Approve and sign all DPO's, subject to the conditions specified in paragraphs (b) (2)(iii) and (3) of this subsection, or appoint in writing by position or by name one or more purchasing agents to act as approval and signatory authority. Such appointees shall be at an organizational level sufficient to ensure responsible control over the obligation of funds that the DPO represents.

(2) Designated purchasing agents shall—

(i) Approve and sign DPO's within their delegated dollar authority.

(ii) Supervise the use and issuance of DPO's and verify that such use and issuance are in compliance with the FAR, this PAR, and the Commission's Financial Systems Manual.

(iii) Ensure that the following conditions exist before approving purchases to be made on DPO's:

(A) There is a valid need for the supplies or services;

(B) A unit fund controller has certified the availability of funds for the proposed purchase;

(C) The vendor is reputable and the price is reasonable; and

(D) The DPO is not being used as a means to purchase a known requirement in excess of the authorized DPO dollar limitation by fragmentizing the requirement (i.e., by breaking the total quantity of the requirement into smaller quantities that can be purchased on two or more DPO's, each of which does not exceed the authorized dollar limitation but which, collectively, will result in the purchase of the total quantity of the requirement).

(3) Individuals authorized to approve and sign DPO's shall ensure that Government funds are not expended for standard stock items, unauthorized office supplies, furnishings, appliances, or for items that are intended solely for personal convenience or to satisfy personal desires of an official or that are nonessential to the needs of the Government and do not contribute to the fulfillment of the Commission's mission.

(4) The General Services Director shall delegate authority for contracting by means of DPO's to bureau directors and heads of independent units. Such delegation shall be published from time to time in bulletin or memorandum form and shall conform to dollar limitations approved by the Administrator.

(c) *Panama Preference.* DPO purchases shall conform to the Treaty preference given to supplies and services obtainable in Panama, as prescribed in subpart 3570.1.

**PART 3514—SEALED BIDDING**

Sec.

3514.000 Scope of part.

**Subpart 3514.2—Solicitation of Bids**

3514.201-6 Solicitation provisions.

3514.205 Solicitation mailing lists.

3514.205-1 Establishment of lists.

**Subpart 3514.4—Opening of Bids and Award of Contract**

3514.404 Rejection of bids.

3514.404-1 Cancellation of invitations after opening.

3514.406 Mistakes in bids.

3514.406-3 Other mistakes disclosed before award.

3514.406-4 Mistakes after award.

3514.407 Award.

3514.407-1 General.

3514.407-6 Equal low bids.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7647, Mar. 2, 1990, unless otherwise noted.

**3514.000 Scope of part.**

This part implements and supplements FAR part 14 by providing additional solicitation provisions and additional guidance on establishment of solicitation mailing lists, cancellation of invitations after opening, mistakes in bids, and contract award.

**Subpart 3514.2—Solicitation of Bids****3514.201-6 Solicitation provisions.**

(a) In addition to the provisions prescribed in FAR 14.201-6, the contracting officer shall insert in all invitations for bids the provisions at—

(1) 3552.214-70, Price—Sealed Bidding; and

(2) 3552.214-73, Caution—Sealed Bidding.

(b) The contracting officer shall insert the following provisions in all invitations for bids for construction. These provisions may also be used in invitations for bids for supplies or services if the contracting officer determines that their use is appropriate:

(1) 3552.214-71, Additional Data To Be Submitted.

(2) 3552.214-72, Rejection of Bids.

(c) The contracting officer shall insert the provision at 3552.214-74, All or None Award—Sealed Bidding, in invitations for bids for supplies or services if the contracting officer determines that award will be made on an “all or none” basis to one bidder for all items because of the nature of the items (e.g., supply items must interface or otherwise be fully compatible with each other; items covering services are so interrelated that it would be impracticable to split the award).

(d)(1) The contracting officer shall insert the provision at 3552.214-75, All or None Award—Sealed Bidding—Construction, in invitations for bids for construction work that is estimated to exceed \$10,000 if the contracting officer determines:

(i) To require bidding on all items, and

(ii) That award will be made on an “all or none” basis to one bidder for all items.

(2) If the construction work is not estimated to exceed \$10,000, the contracting officer shall use the Alternate I version of provision 3552.214-75.

(3) If the contracting officer determines that:

(i) The contract work, regardless of its estimated value, will be awarded to one bidder for all the work, and

(ii) Bidding on all items will not be required, the Alternate II version of provision 3552.214-75 is to be used.

[55 FR 7647, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

**3514.205 Solicitation mailing lists.****3514.205-1 Establishment of lists.**

(a) Each Commission contracting activity shall establish solicitation mailing lists as required by FAR 14.205-1.

(b) In order to carry out the requirements of the Treaty to give preference to the acquisition of supplies and services obtainable from sources in the Republic of Panama, each Commission contracting activity shall develop solicitation lists of local companies which can provide such supplies or services.

### Subpart 3514.4—Opening of Bids and Award of Contract

#### 3514.404 Rejection of bids.

##### 3514.404-1 Cancellation of invitations after opening.

(c) The Procurement Executive, upon recommendation of the cognizant HCA, is authorized to make the determinations prescribed in FAR 14.404-1(c) when an invitation is to be cancelled and all bids rejected after bid opening but prior to award.

(e)(1) The Procurement Executive, upon recommendation of the cognizant HCA, may authorize the contracting officer to complete the acquisition through negotiation in the determination to cancel the invitation for bids when the conditions in FAR 14.404-1(c) (6) or (7) apply.

#### 3514.406 Mistakes in bids.

##### 3514.406-3 Other mistakes disclosed before award.

The cognizant HCA is delegated the authority to make the administrative determinations in connection with mistakes in bids prior to award. This authority may not be redelegated. The General Counsel must review and concur with all determinations under FAR 14.406-3.

##### 3514.406-4 Mistakes after award.

(b) The cognizant HCA is authorized to make determinations on mistakes in bids disclosed after award. The General Counsel must review and concur with all determinations made under FAR 14.406-4.

#### 3514.407 Award.

##### 3514.407-1 General.

(a) The contracting officer shall make a contract award to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only the price and price-related factors contained in FAR 14.201-8. Particular attention shall be paid in supply contracts to evaluation of transportation costs to ensure that the award is made to the lowest overall responsive and responsible bidder.

#### 3514.407-6 Equal low bids.

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

(1) Preference shall be given to the bidder whose supplies or services are obtainable in the Republic of Panama;

(2) When two or more bidders offer supplies or services obtainable in Panama, preference shall be given to the bidder whose bid has a larger percentage of components of Panamanian origin;

(3) If two or more bidders remain equally low after application of paragraphs (a) (1) and (2) of this subsection, the tie-breaking procedures prescribed in FAR 14.407-6(b) shall be followed;

(4) The order of precedence established in FAR 14.407-6 (a) and (b).

(c) When award is made by using the priorities under this 3514.407-6, the contracting officer shall incorporate the written agreement prescribed in FAR 14.407-6(c) in the contract.

## PART 3515—CONTRACTING BY NEGOTIATION

Sec.

3515.000 Scope of part.

### Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations

3515.407 Solicitation provisions.

### Subpart 3515.5—Unsolicited Proposals

3515.500 Scope of subpart.

3515.502 Policy.

3515.503 General.

3515.504 Advance guidance.

3515.506 Agency procedures.

3515.506-1 Receipt and initial review.

3515.506-2 Evaluation.

3515.507 Contracting methods.

3515.508 Prohibitions.

### Subpart 3515.8—Price Negotiation

3515.802 Policy.

3515.804 Cost or pricing data.

3515.804-2 Requiring certified cost or pricing data.

3515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

3515.804-6 Procedural requirements.

### Subpart 3515.9—Profit

3515.902 Policy.

## Panama Canal Commission

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

SOURCE: 55 FR 7648, Mar. 2, 1990, unless otherwise noted.

### **3515.000 Scope of part.**

This part implements and supplements FAR part 15 by providing additional solicitation provisions and by providing Commission policies and procedures on unsolicited proposals, price negotiations, and profit.

## **Subpart 3515.4—Solicitation and Receipt of Proposals and Quotations**

### **3515.407 Solicitation provisions.**

(a) In addition to the provisions prescribed in FAR 15.407, the contracting officer shall insert in solicitations the provisions at—

- (1) 3552.215-70, Price; and
- (2) 3552.215-71, Caution.

(b) The contracting officer shall insert the provision at 3552.215-72, All or None Award, in solicitations for supplies or services if the contracting officer determines that award will be made on an “all or none” basis to one offeror for all items because of the nature of the items (e.g., supply items must interface or otherwise be fully compatible with each other; items covering services are so interrelated that it would be impracticable to split the award). This provision may also be used in solicitations for construction if the contracting officer determines that its use is appropriate.

## **Subpart 3515.5—Unsolicited Proposals**

### **3515.500 Scope of subpart.**

This subpart implements and supplements the policies and procedures governing unsolicited proposals prescribed in FAR subpart 15.5. It also establishes the Commission contact point for coordinating the receipt, evaluation, and disposition of unsolicited proposals.

### **3515.502 Policy.**

It is the policy of the Commission to receive, review, and consider for acceptance unsolicited proposals, as that term is defined in FAR 15.501 and fur-

ther described in FAR 15.503(c). As indicated in FAR 15.502, such proposals may be accepted for sole source negotiation only when appropriate authority exists in FAR subpart 6.3 and when all conditions in FAR 15.507(b) have been complied with.

### **3515.503 General.**

(f) Unsolicited proposals for the performance of services are, except as discussed in this paragraph, unacceptable as the performance of services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service, and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance, provided that such acceptance can be made in conformance with the policy in 3515.502.

### **3515.504 Advance guidance.**

(a) It is not uncommon for sales representatives and engineers to approach field personnel of the Commission to discuss their products or proposals. Bureau Directors and Heads of Independent Units shall take the necessary steps to ensure that Commission employees do not make any commitments, explicit or implied, on behalf of the Commission to eventually procure such products or proposals. Whenever any person orally makes an “unsolicited proposal”, Commission personnel shall inform the offeror that unsolicited proposals must be in writing and that further information should be obtained from the Commission’s Procurement Executive or Assistant Procurement Executive before the offeror proceeds with the submission of a written proposal. Commission personnel may provide copies, if practicable, of FAR subpart 15.5 and subpart 3515.5 of this regulation to persons interested in submitting unsolicited proposals.

**3515.506 Agency procedures.**

(a) In order to allow the Commission sufficient time to evaluate the unsolicited proposal and negotiate any resultant contract, prospective contractors should submit their proposals, in triplicate, well in advance of the time they desire to commence their effort or activity. A minimum of six months advance submission is suggested (see FAR 15.505(c)(2)).

(b) The Procurement Executive is the Commission contact point to coordinate the receipt and handling of unsolicited proposals within the commission.

**3515.506-1 Receipt and initial review.**

(a) The Procurement Executive shall conduct an initial review of each unsolicited proposal to determine if it appears to (1) constitute a valid unsolicited proposal as described in FAR 15.503(c), and (2) meet the requirements contained in FAR 15.506-1(a). If so, the Procurement Executive shall acknowledge its receipt to the sender and initiate processing of the proposal for evaluation in accordance with 3515.506-2 of this subpart. If the proposal does not meet the requirements of FAR 15.506-1(a), or otherwise does not qualify as an unsolicited proposal, the Procurement Executive shall return it to the sender with appropriate comments.

**3515.506-2 Evaluation.**

(a) Promptly after receipt of an unsolicited proposal deemed to satisfy the requirements of 3515.506-1(a), the Procurement Executive shall forward the original and all copies to the cognizant contracting officer for further coordination of the technical evaluation of the proposal. The cognizant contracting officer shall (1) determine the appropriate Commission organization that would fund the acquisition (see FAR 15.507(b)(3)) in the event the unsolicited proposal would be acceptable for a negotiated award pursuant to FAR 15.507(b), and (2) forward a copy to that organization for technical evaluation. If more than one organization has a potential interest in the proposal, or should otherwise be included in the evaluation phase because of its technical expertise, copies of the proposal shall be circulated to each such office.

(b) Evaluating organizations shall complete their evaluations as quickly as practicable and forward them, together with all copies of the unsolicited proposal, to the cognizant contracting officer. Evaluations shall take into consideration the factors in FAR 15.506-2(a), shall be in writing, and shall include, in addition to a comprehensive technical analysis and conclusion(s), a recommendation as to the ultimate disposition of the proposal. When the recommendation is to accept the unsolicited proposal, the evaluation shall include the documentation required in FAR 15.507(b)(3).

**3515.507 Contracting methods.**

(a) If the unsolicited proposal is not recommended for acceptance after technical evaluation, the cognizant contracting officer shall return the proposal and all copies thereof to the offeror, citing the reasons why the proposal is not acceptable. A copy of the letter shall be furnished to the Procurement Executive.

(c) If the unsolicited proposal is acceptable as a basis for negotiation, the cognizant contracting officer shall:

- (1) Obtain the concurrence of the General Counsel before proceeding with negotiations, and
- (2) Advise the Procurement Executive in writing of such action.

**3515.508 Prohibitions.**

(b) All unsolicited proposals received by units of the Commission shall be treated "FOR OFFICIAL USE ONLY" and shall be protected from unauthorized disclosure. No copies shall be made except as authorized by the Procurement Executive or cognizant contracting officer, as appropriate. All Commission personnel who handle a proposal are responsible for safeguarding the information therein, and shall not disclose the information to unauthorized personnel within or outside of the Commission.

**Subpart 3515.8—Price Negotiation****3515.802 Policy.**

It is the policy of the Commission to obtain the cost or pricing data required pursuant to FAR 15.804 from all U.S. or

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foreign (including Panama) prime contractors and subcontractors.

**3515.804 Cost or pricing data.**

**3515.804-2 Requiring certified cost or pricing data.**

When determining the contract amount for purposes of applying the dollar threshold at FAR 15.804-2(a) for requesting certified cost or pricing data, the value of the contract shall include any priced options. Exercise of a priced option is not considered a price adjustment and does not require submission of cost or pricing data.

**3515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.**

All findings rendered pursuant to FAR 15.804-3 (b)(2)(iii) and (c)(8) shall be approved by the cognizant HCA with the concurrence of the General Counsel. The exemptions permitted under FAR 15.804-3(g) and the waivers permitted under FAR 15.804-3(i) shall be authorized by the cognizant HCA with the concurrence of the General Counsel.

**3515.804-6 Procedural requirements.**

For requests for proposals or modifications not exceeding \$25,000, the contracting officer may require contractors to submit information for cost or price analysis on Panama Canal Form No. 6122, Cost Breakdown, at 3553.215.

**Subpart 3515.9—Profit**

**3515.902 Policy.**

(a) The Commission shall use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions of \$500,000 or more that require cost analysis based on the profit analysis factors in FAR 15.905.

(b) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.905-1 when analyzing profit for these contracts or actions:

- (1) All actions which do not require cost analysis;
- (2) Architect-engineer contracts;

- (3) Construction contracts;
  - (4) Contracts primarily requiring delivery of material supplied by subcontractors;
  - (5) Termination settlements; and
  - (6) Other professional services.
- (c) In developing a profit or fee prenegotiation objective, the contracting officer shall comply with the requirements in FAR 15.903.
- (d) When profit analysis is required, any amount proposed by the prospective contractor for the cost of money for facilities capital allowable under FAR 31.205-10 shall be deducted from the prenegotiation cost base objective before calculating the profit objective.
- (e) The cognizant HCA is responsible for establishing procedures to ensure compliance with this subpart.

**PART 3516—TYPES OF CONTRACTS**

Sec.  
3516.000 Scope of part.

**Subpart 3516.3—Cost-Reimbursement Contracts**

3516.301 General.  
3516.301-3 Limitations.

**Subpart 3516.6—Time-and-Materials, Labor-Hour, and Letter Contracts**

3516.601 Time-and-materials contracts.  
3516.603 Letter contracts.  
3516.603-2 Application.  
3516.603-3 Limitations.  
3516.603-70 Information to be furnished when requesting authority to issue a letter contract.  
3516.603-71 Approval for modifications to letter contracts.

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

SOURCE: 55 FR 7650, Mar. 2, 1990, unless otherwise noted.

**3516.000 Scope of part.**

This part implements and supplements FAR part 16. It provides Commission policies and procedures for preparation of determinations and findings authorizing use of cost-reimbursement contracts, and for use of time-and-materials and letter contracts.

### Subpart 3516.3—Cost-Reimbursement Contracts

#### 3516.301 General.

#### 3516.301-3 Limitations.

(c) The following format shall be used and executed by the contracting officer as the determination and findings authorizing the use of a cost-reimbursement contract:

PANAMA CANAL COMMISSION

Determination and Findings

*Authority to Use Cost-Reimbursement Contract*

I hereby find that:

(1) The (Bureau/Division name) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is (\$\_\_\_\_\_) (if contract is CPMF type, insert, ('plus a fixed fee of (\$\_\_\_\_\_) which is \_\_\_ percent of the estimated cost exclusive of fee').

(2) (Set forth facts and circumstances that show why it is impracticable to acquire supplies or services of the kind or quality required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings, it is impracticable to acquire supplies or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed fee\*) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed fee\*) method of contracting is likely to be less costly than other methods.

Date \_\_\_\_\_

(Signature)

\*Contracting officer inserts appropriate type of contract.

The determination and findings for all cost-reimbursement and incentive/award fee type contracts shall be reviewed and approved by the HCA.

### Subpart 3516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

#### 3516.601 Time-and-materials contracts.

(c) *Limitations.* The format prescribed in 3516.301-3(c) shall be used and executed by the contracting officer as the determination and findings authorizing the use of either a time-and-materials contract or a labor-hour contract, ex-

cept that in lieu of the final paragraph insert the following:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the acquisition of the required supplies or services.

#### 3516.603 Letter contracts.

#### 3516.603-2 Application.

(a) It is the policy of the Panama Canal Commission to refrain from issuing letter contracts. Exceptions to this policy will be permitted only in those cases in which all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon. Exceptions to this policy must be approved by the Administrator.

#### 3516.603-3 Limitations.

The cognizant HCA is designated to execute the prescribed determination that no other contract is suitable. However, if the cognizant HCA is to sign the letter contract as the contracting officer, the Procurement Executive shall execute the determination.

#### 3516.603-70 Information to be furnished when requesting authority to issue a letter contract.

The following information shall be included by the contracting officer in any memorandum requesting approval to issue a letter contract:

(a) Name and address of proposed contractor.

(b) Location where contract is to be performed.

(c) Contract number, including modification number, if possible.

(d) Brief description of work and services to be performed.

(e) Performance or delivery schedule.

(f) Amount of letter contract.

(g) Estimated total amount of defined contract.

(h) Type of contract to be executed (fixed price, cost-reimbursement, etc.)

(i) Statement of the necessity and advantage to the Commission of the use of the proposed letter contract.

(j) Statement of the percentage of the estimated cost of the proposed acquisition that the obligation of funds represents. In those rare instances in which the obligation represents 50 percent or more of the proposed estimated cost of the acquisition, a justification for that obligation must be included describing the basis and necessity for the obligation (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must ensure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(k) Period of effectiveness of the proposed letter contract.

(l) Statement of any substantive matters that need to be resolved.

**3516.603-71 Approval for modifications to letter contracts.**

All letter contract modifications must be approved by the cognizant HCA responsible for the acquisition. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts and shall include the following:

(a) Name and address of the contractor.

(b) Description of work and services.

(c) Date original request was approved and approving official.

(d) Letter contract number and date issued.

(e) Complete justification as to why the letter contract cannot be defined at this time.

(f) Complete justification as to why the level of funding must be increased.

(g) Complete justification as to why the period of effectiveness is increased, if applicable.

(h) If the funding of letter contracts is to be increased to more than 50 percent of the estimated cost of the acquisition, the information required by 3516.603-70(j) must be included.

**PART 3517—SPECIAL CONTRACTING METHODS**

**Subpart 3517.2—Options**

Sec.

3517.200 Scope of subpart.

3517.203 Solicitations.

3517.204 Contracts.

3517.207 Exercise of options.

**Subpart 3517.5—Interagency Acquisitions Under the Economy Act**

3517.500 Scope of subpart.

3517.501 Definitions.

3517.502 General.

3517.504 Ordering procedures.

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

SOURCE: 55 FR 7651, Mar. 2, 1990, unless otherwise noted.

**Subpart 3517.2—Options**

**3517.200 Scope of subpart.**

This subpart does not apply to contracts for services involving:

(a) Construction, alteration, or repair of real property;

(b) Architect-engineer services;

(c) Automatic data processing equipment systems; and

(d) Telecommunication equipment and services.

However, it does not preclude the use of options in those contracts.

**3517.203 Solicitations.**

(g)(2) The use of options for increased quantities of supplies or services which exceed 50 percent of the base quantity specified in the contract for a particular period shall be approved by the cognizant HCA prior to issuing the solicitation. In the case of supplies, the 50 percent limitation applies only to contracts which have a base quantity of more than one.

**3517.204 Contracts.**

(e) The use of option periods which, when combined with the base contract period, results in a total contract period of performance exceeding twelve

months shall be approved by the cognizant HCA prior to issuing the solicitation. In no event, however, shall the total of the base and option periods exceed sixty (60) months in duration.

**3517.207 Exercise of options.**

(h) The contracting officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d) and FAR 32.703-2, exercise an option contingent upon the availability of funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Commission until a formal notice of availability of funds in the form of a contract modification has been issued by the contracting officer.

**Subpart 3517.5—Interagency Acquisitions Under the Economy Act**

**3517.500 Scope of subpart.**

This subpart prescribes policies and procedures applicable to the use of Interservice Support Agreements and Memorandums of Understanding.

**3517.501 Definitions.**

*Interservice Support Agreement (ISA)* means an agreement entered into be-

tween the Panama Canal Commission and any other department or agency of the United States for the use of facilities, furnishing of supplies or services, or performance of functions. ISA's may be based upon Memorandums of Understanding.

*Memorandum of Understanding (MOU)* means the basic document which outlines host-tenant relationships. MOU's serve as the standard for relationships between host units and supporting or supported activities.

**3517.502 General.**

The General Services Director is the Commission official authorized to enter into ISA's. The Director, by written appointment, may delegate this authority to one or more contracting officers in the General Services Bureau. The determination and findings required by FAR 17.503 shall be made by the General Services Director or the appointee(s), as applicable.

**3517.504 Ordering procedures.**

(a) The procedures in FAR 17.504 shall apply to Commission ISA's.

(b) When the other agency to an ISA is a DOD activity, the DOD forms and format normally shall be followed.

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 3519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

#### Subpart 3519.2—Policies

Sec.

3519.201 General policy.  
3519.202-3 Equal low bids.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

#### Subpart 3519.2—Policies

##### 3519.201 General policy.

(a) Any acquisition which requires the solicitation of bids, proposals, or quotes from sources within Panama and also from sources within the United States shall not be restricted by any United States statute that is inconsistent with Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty.

(d) The Chief, New Orleans Branch, Logistical Support Division, shall discharge the functions of the Small and Disadvantaged Business Utilization Specialist (SDBUS).

[55 FR 7651, Mar. 2, 1990]

##### 3519.202-3 Equal low bids.

In the event of equal low bids, contracts shall be awarded in the order of priority set forth in 3514.407-6.

[55 FR 7651, Mar. 2, 1990]

### PART 3520—LABOR SURPLUS AREA CONCERNS

#### Subpart 3520.1—General

Sec.

3520.102 General policy.  
3520.103 Contract clause.

#### Subpart 3520.2—Set-asides

3520.201 Set-asides for labor surplus area concerns.

3520.201-1 Total set-asides.

#### Subpart 3520.3—Labor Surplus Area Subcontracting Program

3520.301 General.

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

SOURCE: 55 FR 7651, Mar. 2, 1990, unless otherwise noted.

#### Subpart 3520.1—General

##### 3520.102 General policy.

Subject to the order of precedence in FAR 19.504, the Panama Canal Commission shall award appropriate contracts to eligible labor surplus area (LSA) concerns and encourage contractors to place subcontracts with LSA concerns only when all of the following circumstances exist:

(a) The acquisition is to be performed within the United States, its territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

(b) The concern, together with its first-tier subcontractors, will perform substantially in labor surplus areas as defined in FAR 20.101; and

(c) The value of the acquisition is estimated to exceed the small purchase limitation in FAR part 13.

##### 3520.103 Contract clause.

(b) The contract clause at FAR 52.220-1, Preference for Labor Surplus Area Concerns, shall be included in solicitations and contracts only as prescribed by FAR 20.103(b) and under those conditions set forth in 3520.102.

#### Subpart 3520.2—Set-asides

##### 3520.201 Set-asides for labor surplus area concerns.

###### 3520.201-1 Total set-asides.

The contracting officer shall set aside the entire amount of an individual acquisition or class of acquisitions for LSA concerns only under those conditions set forth in 3520.102.

#### Subpart 3520.3—Labor Surplus Area Subcontracting Program

##### 3520.301 General.

The provisions of FAR subpart 20.3 apply only under those conditions set forth in 3520.102.

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**PART 3522—APPLICATION OF  
LABOR LAWS TO GOVERNMENT  
ACQUISITIONS**

Sec.

3522.000 Scope of part.

**Subpart 3522.1—Basic Labor Policies**

3522.100 Scope of subpart.

3522.103 Overtime.

3522.103-4 Approvals.

**Subpart 3522.2—Convict Labor**

3522.270 Applicability.

**Subpart 3522.3—Contract Work Hours and  
Safety Standards Act**

3522.370 Applicability.

**Subpart 3522.4—Labor Standards for  
Contracts Involving Construction**

3522.402 Applicability.

**Subpart 3522.6—Walsh-Healey Public  
Contracts Act**

3522.603 Applicability.

3522.608 Procedures.

3522.608-3 Protests against eligibility.

3522.608-4 Award pending final determination.

3522.608-6 Postaward.

**Subpart 3522.8—Equal Employment  
Opportunity**

3522.803 Responsibilities.

3522.804 Affirmative action programs.

3522.804-2 Construction.

3522.805 Procedures.

3522.807 Exemptions.

3522.808 Complaints.

3522.809 Enforcement.

3522.810 Solicitation provisions and contract clauses.

**Subpart 3522.10—Service Contract Act of  
1965, as Amended**

3522.1003 Applicability.

**Subpart 3522.13—Special Disabled and  
Vietnam Era Veterans**

3522.1302 Applicability.

3522.1303 Waivers.

3522.1306 Complaint procedures.

**Subpart 3522.14—Employment of the  
Handicapped**

3522.1402 Applicability.

3522.1403 Waivers.

3522.1406 Complaint procedures.

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

SOURCE: 55 FR 7652, Mar. 2, 1990, unless otherwise noted.

**3522.000 Scope of part.**

This part prescribes—

(a) Labor laws of the United States and their application to acquisitions conducted by the Panama Canal Commission; and

(b) Contracting policy and procedures for the implementation of pertinent labor laws in contracts with United States and Panamanian business concerns. (See subpart 3525.8 for policies and procedures pertaining specifically to contracts with Panamanian business concerns or others to which Panamanian laws may apply.)

**Subpart 3522.1—Basic Labor  
Policies**

**3522.100 Scope of subpart.**

The provisions of FAR subpart 22.1 shall apply specifically to contracts with United States business concerns to the extent prescribed throughout FAR part 22.

**3522.103 Overtime.**

**3522.103-4 Approvals.**

(a) Overtime requests by contractors may be approved under the conditions contemplated in FAR 22.103-4(a). Such approvals are required under cost-reimbursement, time-and-materials, and labor-hour contracts since such contracts place substantial cost risk on the Government.

(b) The Commission officials for approval of contractor requests for overtime in cost-reimbursement contracts as contemplated in FAR 22.103-4 (a), (b), and (f) are the cognizant Heads of Contracting Activities.

**Subpart 3522.2—Convict Labor**

**3522.270 Applicability.**

As indicated at FAR 22.202, the policies and procedures in FAR subpart 22.2 are applicable only to contracts which are to be performed within any State,

the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands. The policies and procedures do not apply to contracts which are to be performed within the Republic of Panama or within any other foreign country.

### Subpart 3522.3—Contract Work Hours and Safety Standards Act

#### 3522.370 Applicability.

As indicated at FAR 22.305, the policies and procedures in FAR subpart 22.3 shall not be applied to contracts to be performed solely within the Republic of Panama, other foreign countries, or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.

### Subpart 3522.4—Labor Standards for Contracts Involving Construction

#### 3522.402 Applicability.

(c) *Contracts to be performed outside the United States.* As indicated by paragraphs (a) through (d) at FAR 22.407, the requirements of FAR subpart 22.4 do not apply to contracts for construction to be performed within the Republic of Panama or within any other foreign country.

### Subpart 3522.6—Walsh-Healey Public Contracts Act

#### 3522.603 Applicability.

As indicated at FAR 22.603 and FAR 22.604-2, the requirements and procedures of FAR subpart 22.6 and this subpart 3522.6 do not apply to contracts for supplies that are manufactured in the Republic of Panama or elsewhere outside the United States, Puerto Rico or the Virgin Islands.

#### 3522.608 Procedures.

##### 3522.608-3 Protests against eligibility.

The contracting officer shall forward the determination of eligibility, after concurrence by legal counsel, to the cognizant Head of Contracting Activity (HCA) for referral to the Department of Labor (DOL) or to the Small Business Administration if the offeror is a small business.

##### 3522.608-4 Award pending final determination.

(a) If an offeror's eligibility case is pending review by the DOL or SBA, the contracting officer shall obtain the concurrence of legal counsel and approval of the cognizant HCA prior to making an award.

##### 3522.608-6 Postaward.

(c) In the event of a violation of a stipulation required under the Act, the contracting officer shall, with concurrence by legal counsel and approval by the cognizant HCA, notify the appropriate regional office of the DOL.

### Subpart 3522.8—Equal Employment Opportunity

#### 3522.803 Responsibilities.

(d) If the applicability of Executive Order 11246 and implementing regulations are questioned by any commercial firm or other entity with whom the Panama Canal Commission has contracted or contemplates contracting, the contracting officer shall route the matter to the cognizant HCA, who shall obtain the opinion of legal counsel.

#### 3522.804 Affirmative action programs.

##### 3522.804-2 Construction.

(b) The HCA having construction contract responsibility shall maintain and distribute a current list of geographical areas subject to affirmative action requirements to the principally affected contracting officers. The list may be obtained from the regional Office of Federal Contract Compliance Policy (OFCCP).

**3522.805 Procedures.**

(a) The contracting officer shall obtain a preaward clearance as required by FAR 22.805(a) (2), (3), and (5). Where, as contemplated in FAR 22.805(a)(7), there exists a potential delay in award of an urgent and critical contract, and where the OFCCP advises of its inability to timely complete the review, a written justification for award shall be forwarded to the cognizant HCA for approval of award without preaward clearance.

(b) The contracting officer shall obtain and maintain an adequate supply of the posters entitled "Equal Opportunity is the Law" for distribution to contractors when applicable.

**3522.807 Exemptions.**

(b) Panama Canal Commission contracts are exempt from the Equal Employment Opportunity provisions of Executive Order 11246 to the extent that work is performed outside the United States by employees who were not recruited within the United States. (See FAR 22.801 for the meaning of "United States" as used herein.)

(c) Requests for exemption pursuant to FAR 22.807(c) shall be submitted to the Director, OFCCP, through the cognizant HCA.

**3522.808 Complaints.**

Information regarding all complaints and subsequent referrals shall be forwarded to the cognizant HCA.

**3522.809 Enforcement.**

The Procurement Executive is designated to make the determinations that may be exercised against contractors pursuant to FAR 22.809.

**3522.810 Solicitation provisions and contract clauses.**

All solicitation provisions and contract clauses prescribed in FAR 22.810 are applicable to contracts awarded by the Panama Canal Commission unless an exemption exists or has been obtained in accordance with FAR 22.807 and 3522.807.

**Subpart 3522.10—Service Contract Act of 1965, as Amended****3522.1003 Applicability.**

As indicated at FAR 22.1003-2, the policies and procedures in FAR subpart 22.10 do not apply to service contracts to be performed in the Republic of Panama or elsewhere outside the United States. (See FAR 22.1001 for the meaning of "United States" as used herein.)

**Subpart 3522.13—Special Disabled and Vietnam Era Veterans****3522.1302 Applicability.**

Panama Canal Commission contracts are exempt from the provisions of the Vietnam Era Veterans Readjustment Assistance Act of 1972 to the extent that the work is performed outside the United States by employees who were not recruited in the United States. (See FAR 22.1308(a)(1) for the meaning of "United States" as used herein.)

**3522.1303 Waivers.**

(a) The Administrator of the Panama Canal Commission is the "agency head" or the "head of a civilian agency" for purposes of the provisions of FAR 22.1303 (a) and (b)(1), respectively.

(c) Requests for waivers shall be forwarded to the cognizant HCA for referral to the administrator for approval.

**3522.1306 Complaint procedures.**

The contracting officer shall forward written complaints to the cognizant HCA for subsequent referral to the Director, OFCCP.

**Subpart 3522.14—Employment of the Handicapped****3522.1402 Applicability.**

(a) Panama Canal Commission contracts are exempt from the Rehabilitation Act of 1973 to the extent that the work is performed outside the United States by employees who were not recruited within the United States. (See FAR 22.1408(a)(1) for the meaning of "United States" as used herein.)

**Panama Canal Commission**

**3524.270**

**3522.1403 Waivers.**

(a) The Administrator of the Panama Canal Commission is the "agency head" or the "head of a civilian agency" for purposes of the provisions of FAR 22.1403 (a) and (b)(1), respectively.

(c) Requests for waivers shall be forwarded through the cognizant HCA to the Administrator for approval.

**3522.1406 Complaint procedures.**

Complaints regarding administration of the Act shall be forwarded to the cognizant HCA prior to submission to the OFCCP.

**PART 3524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

**Subpart 3524.1—Protection of Individual Privacy**

Sec.  
3524.102 General.

**Subpart 3524.2—Freedom of Information Act**

3524.270 Procedures.  
AUTHORITY: 40 U.S.C. 486(c).

**Subpart 3524.1—Protection of Individual Privacy**

**3524.102 General.**

Personal information obtained by the agency to be used in determining an individual's right to a benefit, or to otherwise incur an obligation, will be solicited directly from the subject of the record to the extent practicable. The system manager responsible for the maintenance and dissemination of personal information about individuals shall ensure that the information is collected and disclosed in compliance with the provisions of the Privacy Act of 1974 and part 10 of 35 CFR, this agency's regulations implementing the Act.

[55 FR 7653, Mar. 2, 1990]

**Subpart 3524.2—Freedom of Information Act**

**3524.270 Procedures.**

Freedom of Information Act (FOIA) requests for contractual information

shall be processed in accordance with part 9 of 35 CFR.

(a) Upon receipt, all FOIA requests shall be forwarded immediately to the Agency Records Officer (Chief, Administrative Services Division) for acknowledgment and processing within the statutory time limitations as stipulated in the Act.

(b) Prior to release of any contractual information to FOIA requesters, the Agency Records Officer shall coordinate with other agency offices or officials having a substantial subject matter interest.

[55 FR 7653, Mar. 2, 1990]

**PART 3525—FOREIGN ACQUISITION**

Sec.  
3525.000 Scope of part.

**Subpart 3525.1—Buy American Act—Supplies**

3525.102 Policy.

**Subpart 3525.2—Buy American Act—Construction Materials**

3525.202 Policy.

**Subpart 3525.3—Balance of Payments Program**

3525.300-70 Applicability.  
3525.302 Policy.

**Subpart 3525.4—Purchases Under the Trade Agreements Act of 1979**

3525.402 Policy.

**Subpart 3525.670—Customs and Duties, Republic of Panama**

3525.670-1 Policy.  
3525.670-2 Procedures.

**Subpart 3525.8—International Agreements and Coordination**

3525.801 International agreements.  
3525.801-70 Language.  
3525.801-71 Choice of law.  
3525.801-72 Immunity.  
3525.801-73 Designated contractors.  
3525.801-74 Panamanian preference.  
3525.801-75 Customary local business usage.  
3525.801-76 Contract clauses.

## 3525.000

AUTHORITY: 40 U.S.C. 486(c); Article VIII of the Panama Canal Treaty of 1977 and Articles IX, XI, and XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7654, Mar. 2, 1990, unless otherwise noted.

### **3525.000 Scope of part.**

This part provides policies and procedures related to the application of the Buy American Act, the Balance of Payments Act, and purchases under the Trade Agreements Act of 1979 to Commission acquisitions. This part also provides policies and procedures for the application of international agreements to Commission acquisitions.

### **Subpart 3525.1—Buy American Act—Supplies**

#### **3525.102 Policy.**

The Buy American Act does not apply to purchases of supplies, or services that involve the furnishing of supplies, for use in the Republic of Panama because such use is outside the United States, as provided in FAR 25.102(a)(1).

[55 FR 7654, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

### **Subpart 3525.2—Buy American Act—Construction Materials**

#### **3525.202 Policy.**

The Buy American Act does not apply to contracts for the construction, alteration, or repair of any public building or public work in the Republic of Panama. The Act applies only to acquisitions for use inside the United States, as provided in FAR 25.202.

### **Subpart 3525.3—Balance of Payments Program**

#### **3525.300-70 Applicability.**

In accordance with Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty, the Balance of Payments provisions limiting purchase of foreign products or services shall not apply to purchases for use by the Commission of—

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(a) Articles, materials, or supplies that are produced in Panama (mined, produced, or manufactured);

(b) End products, the largest percentage of which are components of Panamanian origin; and

(c) Services which are available in Panama.

#### **3525.302 Policy.**

(a) The cognizant HCA is the official designated to make the determination required by FAR 25.302(b)(3) that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forego filling it or to provide a domestic substitute.

(b)(6) The Procurement Executive is the official designated to make the determination, with the assistance of legal counsel, that the acquisition of foreign end products or services is required by a treaty or executive agreement between governments.

### **Subpart 3525.4—Purchases Under the Trade Agreements Act of 1979**

#### **3525.402 Policy.**

(c) Pursuant to a delegation from the United States Trade Representative under the authority provided by section 302(b)(2) of the Trade Agreements Act, the Administrator of the Panama Canal Commission is authorized to waive, on a case-by-case basis, the purchasing prohibition of section 302(a)(1) of the Act. The Administrator has delegated this waiver authority to the Procurement Executive.

### **Subpart 3525.670—Customs and Duties, Republic of Panama**

#### **3525.670-1 Policy.**

(a) Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty provides that all property imported into the Republic of Panama for the official use or benefit of the Commission, including that imported by its contractors or subcontractors in connection with the various activities authorized under said Agreement, shall be exempt from the payment of all customs duties or other import taxes and charges and from all license requirements.

(b) All property imported into the Republic of Panama free of customs duties and other taxes may be exported free of customs duties, export permits, export taxes, and other assessments. All property acquired in the Republic of Panama by, or in the name of, the Commission may be exported free of customs duties, export licenses, and other export taxes or charges.

**3525.670-2 Procedures.**

When requested by the contractor or its representative, the contracting officer will initiate a cargo certification document stating that the property being imported is for the official use or benefit of the Commission. The cargo certification document is then processed by the Cargo Documentation Section of the Commission's Administrative Services Division for presentation by the contractor or representative to the appropriate authorities in the Republic of Panama.

**Subpart 3525.8—International Agreements and Coordination**

**3525.801 International agreements.**

The Panama Canal Treaty and the Agreement in Implementation of Article III of the Treaty affect the contracting activities of the Commission. Contracting officers shall give particular attention to the provisions in these agreements that pertain to acquisition procedures, contractors' taxes, facilities, and other matters relating to contracting.

**3525.801-70 Language.**

(a) Solicitations and contracts shall be issued in the English language.

(b) All offers, correspondence and documents related to solicitations and contracts shall be submitted in the English language.

(c) Where inconsistencies between the terms of solicitations or contracts and any translation into another language occur, the English language meaning shall control.

**3525.801-71 Choice of law.**

All matters relating to the validity, construction, interpretation, performance, and enforcement of any contract

awarded by the Commission shall be determined in accordance with the applicable Federal law of the United States.

**3525.801-72 Immunity.**

Under Article VIII of the Treaty, agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to the Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama, and their installations, official archives and documents, shall be inviolable.

**3525.801-73 Designated contractors.**

(a) *Definition.*

*Designated contractors* means:

(1)(i) Natural persons who are nationals or permanent residents of the United States, or

(ii) Corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of such natural persons—

(A) To whom contracts are awarded by the Commission, and

(B) Who are so designated in writing by the Commission.

(2) The term also includes subcontractors of designated contractors:

(i) Who are nationals or permanent residents of the United States, or

(ii) Which are corporations or other legal entities organized under the laws of the United States, any state thereof, or the District of Columbia, and which are under the effective control of United States nationals or permanent residents.

(3) Because Article XI of the Treaty's Implementing Agreement (see paragraph (b) of this subsection and 3502.101) imposes certain obligations and confers certain benefits on designated contractors, all of which are dependent upon their or their employees' physical presence in Panama, the term is understood to mean only those contractors and/or subcontractors that will perform all or a portion of the contract work in the Republic of Panama. Such contractors are normally designated at the time of contract award.

(b) *Obligations and benefits.* Designated contractors are subject to the laws and regulations of the Republic of Panama except for certain obligations and benefits established in Article XI of the Agreement in Implementation of Article III of the Treaty. These obligations and benefits are cited below.

(1) The contractor must engage exclusively in activities related to the execution of the work for which the contractor has been contracted by the Commission or related to other works or activities authorized by the Republic of Panama.

(2) The contractor must refrain from carrying out practices which may constitute violations of the laws of the Republic of Panama.

(3) The contractor shall enter and depart from the territory of the Republic of Panama in accordance with procedures prescribed for United States citizen employees in Article XII of the Implementing Agreement.

(4) The contractor must obtain a document indicating his/her identity as a contractor, which the proper authorities of the United States shall issue when they are satisfied that the contractor is duly qualified. This certificate shall be sufficient to permit the contractor to operate under Panamanian law as a contractor of the United States. Nevertheless, the authorities of the Republic of Panama may require the registration of the appropriate documents to establish juridical presence in the Republic of Panama.

(5) The contractor shall not be obliged to pay any tax or other assessment to the Republic of Panama on income derived under a contract with the Commission, so long as the contractor is taxed in the United States at a rate substantially equivalent to the corresponding taxes and assessments of the Republic of Panama.

(6) The contractor may move freely within the Republic of Panama, and shall have exemptions from customs duties and other charges, as provided for United States citizen employees in the Implementing Agreement.

(7) The contractor may use public services and installations in accordance with the terms and conditions of Article XIII of the Implementing

Agreement and, on a non-discriminatory basis, shall pay the Republic of Panama highway tolls and taxes on plates for private vehicles.

(8) The contractor shall be exempt from any taxes imposed on depreciable assets belonging to the contractor, other than real estate, which are used exclusively for the execution of contracts with the United States.

(9) The contractor may use the services and facilities provided for in Articles X and XVIII of the Agreement in Implementation of Article IV of the Panama Canal Treaty, to the extent such use is authorized by the United States; provided, however, that after five years from the entry into force of the Implementing Agreement, the use of military postal services by such contractors shall be limited to that related to the execution of contracts with the United States.

(c) *Notification of designation.* The contracting officer shall, through the Director, Office of Executive Administration, advise contractors that they are "designated contractors" within the meaning of Article XI of the Implementing Agreement and advise them to review their obligations thereunder. Such designations shall be communicated to the authorities of the Republic of Panama by the authorities of the United States. Contracting officers shall maintain current lists of "designated contractors" at all times.

(d) *Withdrawal of designation.* The Commission shall withdraw the designation of a contractor when any of the following circumstances occur:

(1) Completion or termination of the contract with the Commission.

(2) Proof that during the life of the contract such contractors have engaged in the Republic of Panama in business activities not related to their contracts with the United States nor authorized by the Republic of Panama.

(3) Proof that such contractors are engaged in practices which in the view of the Republic of Panama constitute serious violations of the laws of the Republic of Panama.

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3525.801-76

The authorities of the United States shall notify the authorities of the Republic of Panama whenever the designation of a contractor has been withdrawn. If, within sixty days after notification of the withdrawal of the designation of a contractor who entered the territory of the Republic of Panama in the capacity of a contractor, the authorities of the Republic of Panama require such contractor to leave its territory, the United States shall ensure that the Republic of Panama shall not incur any expense due to the cost of transportation.

(e) *Impact on subcontractors, employees, and dependents.* The provisions of this 3525.801-73 shall similarly apply to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be subject to the Panamanian Social Security system.

### **3525.801-74 Panamanian preference.**

(a) Article IX of the Agreement in Implementation of Article III of the Treaty provides that:

In procuring supplies and services, the Commission shall give preference to those obtainable in the Republic of Panama. Such preference shall apply to the maximum extent possible when such supplies and services are available as required, and are comparable in quality and price to those which may be obtained from other sources. For the comparison of prices there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance and handling, of the supplies and services which compete with Panamanian supplies and services. In the acquisition of goods in the Republic of Panama, preference shall be given to goods having a larger percentage of components of Panamanian origin.

(b) Part 3570 provides guidance on the implementation of the Panamanian

preference provisions of the Treaty's Implementing Agreement.

### **3525.801-75 Customary local business usage.**

In acquisitions conducted in the Republic of Panama, customary local business usage, where not inconsistent with the applicable Federal law of the United States, may be followed. When conflicts develop between local business usage and the requirements of the Federal Acquisition Regulation, the matter shall be referred to the Procurement Executive, who shall seek the opinion of legal counsel, as a deviation for processing as required by 3501.405 and FAR 1.405.

### **3525.801-76 Contract clauses.**

As used in this subsection, the term "foreign" means any country other than the United States. The contracting officer shall insert the following clauses in solicitations and contracts, as indicated below:

(a) In lieu of FAR clause 52.225-14, Inconsistency Between English Version and Translation of Contract, the clause at 3552.225-70, Language, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(b) The clause at 3552.225-71, Notice of Applicability of United States Federal Law, whenever foreign offers are anticipated or contracts are awarded to foreign contractors.

(c) The clause at 3552.225-72, Designated Contractors, whenever the contract work is to be performed in whole or in part in the Republic of Panama and offers are anticipated from, or contracts are awarded to, U.S. contractors.

(d) The clause at 3552.225-73, Responsibility for Observance of Laws, Orders, and Regulations, whenever the contract work is to be performed in whole or in part in the Republic of Panama.

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 3527—PATENTS, DATA AND COPYRIGHTS

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

#### Subpart 3527.3—Patent Rights Under Government Contracts

#### **3527.304-3 Contracts for construction work or architect-engineer services.**

(b) The contracting officer shall insert the clause at 3552.227-70, Government Rights, in all solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those that call for or can be expected to involve only “standard types of construction” to be built by previously developed equipment, methods, and processes. (See FAR 27.304-3(b) for the meaning of the term “standard types of construction”).

[55 FR 7656, Mar. 2, 1990]

### PART 3528—BONDS AND INSURANCE

#### Subpart 3528.1—Bonds

Sec.

- 3528.100 Scope of subpart.
- 3528.101 Bid or proposal guarantees.
- 3528.101-3 Contract clauses.
- 3528.102 Performance and payment bonds for construction contracts.
- 3528.102-1 General.
- 3528.102-3 Solicitation requirements.
- 3528.103 Performance and payment bonds for other than construction contracts.
- 3528.103-2 Performance bonds.
- 3528.103-3 Payment bonds.
- 3528.103-70 Contract clauses.

#### Subpart 3528.2—Sureties

- 3528.201 Requirements for sureties.
- 3528.202 Acceptability of corporate sureties.
- 3528.202-70 Corporate seals.

#### Subpart 3528.3—Insurance

- 3528.301 Policy.
- 3528.305 Overseas workers’ compensation and war-hazard insurance.
- 3528.309 Contract clause for workers’ compensation insurance.
- 3528.370 Contract clause for special Panama insurance.

AUTHORITY: 40 U.S.C. 486(c); Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7656, Mar. 2, 1990, unless otherwise noted.

#### Subpart 3528.1—Bonds

#### **3528.100 Scope of subpart.**

Bid or proposal guarantees, performance bonds, and payment bonds in Panama Canal Commission acquisitions may be required in contracts for construction as that term is defined at FAR 36.102, and in contracts for other than construction as explained at FAR 28.103.

#### **3528.101 Bid or proposal guarantees.**

##### **3528.101-3 Contract clauses.**

(a) When a guarantee is required, the contracting officer shall insert the clause at 3552.228-70, Bid Guarantee Amount, in sealed bid solicitations and contracts, or the clause at 3552.228-75, Proposal Guarantee, in negotiated solicitations and contracts, as applicable.

(b) If the contract is to be negotiated, the contracting officer shall insert the clause at 3552.228-75, Proposal Guarantee, in lieu of the bid guarantee clause at FAR 52.228-1.

#### **3528.102 Performance and payment bonds for construction contracts.**

##### **3528.102-1 General.**

(a) The Miller Act (40 U.S.C. 270a-270f) requires performance and payment bonds for any construction contract (including contracts for alteration, or repair of any public building or public work) exceeding \$25,000, except that this requirement may be waived by the contracting officer for work to be performed in a foreign country upon the finding contemplated in FAR 28.102-1(a)(1). It has been determined by the Panama Canal Commission General Counsel, however, that the contracting officer may also establish requirements for such bonds for lesser dollar value contracts when it has been determined that the financial protection against damages is in the

best interests of the Government. Accordingly, the provisions of 3528.102-3 regarding solicitation requirements must be followed.

**3528.102-3 Solicitation requirements.**

When performance or payment bonds are required, the contracting officer shall insert the clauses at 3552.228-71, Bonds and Insurance, and 3552.228-72, Bonds, in the solicitation and contract.

**3528.103 Performance and payment bonds for other than construction contracts.**

**3528.103-2 Performance bonds.**

(a) Contracts for high dollar acquisitions of vital supplies, such as cargo lot shipments of Bunker C fuel oil, is another situation that may warrant a performance bond.

**3528.103-3 Payment bonds.**

(a) A payment bond may be considered to be in the Government's interest when substantial progress payments are made before delivery of end items starts (for example, in the acquisition of tugboats and dredges).

**3528.103-70 Contract clauses.**

(a) *Performance bonds.* When a performance bond for other than construction contracts is required pursuant to FAR 28.103-2(a), but a payment bond is not required, the contracting officer shall insert the clause at 3552.228-76, Performance Bond, in all such solicitations and contracts. If a payment bond is also required (see FAR 28.103-3(a) and 3528.103-3(a)), the contracting officer shall insert the clause at 3552.228-77, Performance and Payment Bonds, in lieu of clause 3552.228-76.

(b) *Payment bonds.* When a payment bond for other than construction contracts is required pursuant to FAR 28.103-3(a) and 3528.103-3(a), the contracting officer shall insert the clause at 3552.228-77, Performance and Payment Bonds, in all such solicitations and contracts.

**Subpart 3528.2—Sureties**

**3528.201 Requirements for sureties.**

(a) In addition to those acceptable forms of security enumerated in FAR

28.201, contracting officers may accept such Panamanian sureties as may be approved in accordance with 3528.202(b).

(b) Contracting officers may not preclude the use by any offeror of any type of security or surety permitted by FAR subpart 28.2 or this subpart.

[55 FR 7656, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

**3528.202 Acceptability of corporate sureties.**

(b) The authority delegated to contracting officers in FAR 28.202(b) to determine the acceptability of sureties not appearing on Treasury Department Circular 570 for contracts performed in a foreign country is vested in the Chief Financial Officer of the Panama Canal Commission. The procedure for approving such sureties is prescribed in the Commission's Financial Systems Manual 99.333.

[55 FR 7656, Mar. 2, 1990. Redesignated and amended at 55 FR 38331, Sept. 18, 1990]

**3528.202-70 Corporate seals.**

(a) In the event that a "Corporate Seal," as required in the instructions for preparation of any standard form or document, is not used due to the dictates of custom, practice, or law within Panama or other foreign countries, such bonds shall be accepted provided the contracting officer is satisfied, with the concurrence of legal counsel, that the person signing the bond is authorized to bind the surety (see FAR 4.102).

(b) In the case of acquisitions conducted using the sealed bid method described in FAR part 14, bids which do not include required bid bonds must be rejected as nonresponsive except as provided in FAR 28.101-4. See also FAR 14.405 regarding minor informalities or irregularities in bids.

**Subpart 3528.3—Insurance**

**3528.301 Policy.**

(b) In addition to the requirements of FAR 28.301(b), designated contractors (see 3525.801-73(a)), as prescribed at paragraph 7 of Article XVIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, shall, upon initiation of work or

construction activities, obtain appropriate insurance to cover civil liabilities in the Republic of Panama that may arise as a result of acts or omissions done in the performance of official duty by their employees. The insurance coverage shall include coverage for the tortious conduct of their employees. Such insurance may be obtained from insurance companies licensed to engage in such business within the Republic of Panama.

**3528.305 Overseas workers' compensation and war-hazard insurance.**

(d) Pursuant to a waiver granted by the Secretary of Labor, effective January 22, 1980, the provisions of the Defense Base Act are not applicable to any public-work contract awarded by the Panama Canal Commission in the Panama Canal area with respect to non-U.S. citizen employees, i.e., any Panamanian or other foreign national, employed under such contracts. The waiver does not apply, however, to employees who are:

- (1) Hired in the United States by any contractor;
- (2) Residents of the United States; or
- (3) Citizens of the United States.

The waiver was granted with the proviso that the non-U.S. citizen employees thus exempted from the provisions of the Defense Base Act will be provided workers' compensation benefits prescribed in the Panamanian Social Security System.

**3528.309 Contract clause for workers' compensation insurance.**

(a) In addition to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), prescribed at FAR 28.309(a)(1), the contracting officer shall insert the clause at 3552.228-73, Non-U.S. Workers' Compensation Insurance, in all public-work solicitations and contracts in which the employment of Panamanian or other foreign nationals is anticipated (see 3528.305(d)).

**3528.370 Contract clause for special Panama insurance.**

The contracting officer shall insert the clause at 3552.228-74, Special Panama Insurance, in all public-work solicitations and contracts:

(a) Which are to be performed in whole or in part in the Republic of Panama, and

(b) For which offers are anticipated from, or contracts are awarded to, U.S. contractors.

**PART 3529—TAXES**

**Subpart 3529.4—Contract Clauses**

3529.402 Foreign contracts.

3529.402-1 Foreign fixed-price contracts.

AUTHORITY: 40 U.S.C. 486(c); Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively.

**Subpart 3529.4—Contract Clauses**

**3529.402 Foreign contracts.**

**3529.402-1 Foreign fixed-price contracts.**

(a) *Procedures regarding FAR clause 52.229-6.* In recognition of the fundamental purpose of paragraph 2(e) of Articles XI and XII of the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty of 1977, respectively, representatives of the Governments of the United States and Panama approved an Agreement on Taxation of Contractors on August 6, 1986. This taxation agreement impacts on U.S. contractors in certain circumstances. In order to alert prospective contractors to this possibility, the following procedures shall apply regarding FAR clause 52.229-6:

(1) The contracting officer shall supplement FAR clause 52.229-6, Taxes—Foreign Fixed-Price Contracts, by inserting the following note at the end of the clause in all solicitations and contracts, unless the acquisition is a small purchase under FAR part 13 that:

- (i) Will not require the contractor's presence in Panama, or
- (ii) Does not solicit U.S. offerors:

NOTE: If the Contractor is a U.S. contractor, such contractor is advised that, pursuant to a taxation agreement between the Governments of the United States and Panama, U.S. contractors and subcontractors, including their U.S. citizen or U.S. permanent resident employees, may be required to file tax returns with, as well as provide corresponding U.S. tax information to, the Government of Panama on income arising under

or relating to Panama Canal Commission contracts. This requirement is applicable when the contractor, subcontractor, or individual employee is present in the Republic of Panama in connection with one or more Commission contracts for more than 90 calendar days during the relevant tax year. This description of the stated requirement is not intended, nor should it be construed, to be a legal analysis of the taxation agreement. The Commission assumes no responsibility or liability for a contractor's or individual's obligation under the taxation agreement, nor for the interpretation of such agreement. A copy of the taxation agreement will be provided to the contractor or prospective contractor upon request to the contracting officer.

(2) If clause 52.229-6 is incorporated by reference, rather than in full text, insert the note directly below the title of the clause.

(3) Include elsewhere in the body of the solicitation the following note to alert offerors that clause 52.229-6 has been supplemented. In supply and service solicitations, this note should normally be inserted in Section B following the blanks provided for offerors to insert line item prices. In construction solicitations, the note should normally be attached to Standard Form 1442 or inserted in the solicitation's Special Conditions. In small purchase acquisitions, the note is to be included in the document requesting prices or by separate attachment to the document. If a U.S. contractor wins the small purchase award, the note shall be incorporated either (i) in full text, or (ii) by reference, on the purchase order or other award document.

NOTE: Offerors' attention is directed to the note added at the end of clause 52.229-6, Taxes—Foreign Fixed-Price Contracts. The note is an advisory notice regarding possible tax obligations under certain circumstances of U.S. contractors, subcontractors, and their employees to the Government of Panama. If the circumstances appear to be applicable, offerors may obtain additional information by contacting the contracting office at the address or phone number provided elsewhere in this solicitation.

(4) If additional information regarding the taxation agreement is requested of Panama Canal Commission employees, either before or after award, the individual who receives the request shall promptly notify the contracting officer and the Office of Gen-

eral Counsel who shall determine, in conjunction with the Office of Executive Administration, the appropriate action to be taken.

(5) Contracting officers shall serve as the official liaison, for purposes of the taxation agreement, between offerors/contractors and the Commission. The taxation agreement provides for the classification of contractors into two categories, resident and non-resident, by representatives of the Governments of the United States and Panama according to criteria set forth in the agreement. The representative of the United States Government is the Assistant Director, Policy and Programs, Office of Executive Administration. Classifications, when confirmed by the two representatives, will be communicated to the respective contractors by the contracting officer.

[55 FR 7657, Mar. 2, 1990]

## PART 3531—CONTRACT COST PRINCIPLES AND PROCEDURES

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

### Subpart 3531.2—Contracts with Commercial Organizations

#### 3531.205-46 Travel costs.

(a) Fixed-price type contracts that provide for separate reimbursement of travel and per diem shall state that such reimbursement will not exceed rates established in applicable Federal Travel Regulations.

(b) The clause at 3552.231-70, Travel Costs, shall be included in contracts as described in paragraph (a) of this subsection.

[55 FR 7658, Mar 2, 1990]

## PART 3532—CONTRACT FINANCING

Sec.  
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- 3532.901 Applicability.

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

SOURCE: 55 FR 7658, Mar. 2, 1990, unless otherwise noted.

**3532.000 Scope of part.**

This part implements and supplements FAR part 32 and provides Commission policies and procedures for contract financing and other payment matters, including—

- (a) Advance payments;
- (b) Contract debts;
- (c) Assignment of claims; and
- (d) Prompt payment implementation.

Subpart 3532.1—General

**3532.111 Contract clauses.**

(a)(7) The clause at 3552.232-70, Contract Payments, in solicitations and contracts for construction when the contracting officer determines that the value of materials delivered to the work site may be taken into account in preparing the progress payment estimate.

(8) The clause at 3552.232-73, Invoices, in all solicitations and contracts except small purchases. The clause or a modified version of the clause may be used in small purchases.

Subpart 3532.4—Advance Payments

**3532.402 General.**

(e)(1) The Procurement Executive is responsible for approving findings and determinations supporting the use of advance payments and approving contract terms concerning advance payments. These approvals must have the concurrence of the General Counsel.

(2) The contracting officer shall coordinate proposed advance payment authorizations with the Accounting Division.

**3532.407 Interest.**

(d) The Procurement Executive is authorized to approve advance payments without interest.

Subpart 3532.6—Contract Debts

**3532.600 Scope of subpart.**

This subpart assigns responsibilities and provides procedures for the collection of contract debts, including collection of debts under contracts for the transportation of household goods.

**3532.601 Definition.**

*Responsible official*, as used in this subpart, means the contracting officer.

**3532.602 General.**

In addition to the examples cited in FAR 32.602, contract debts may include those arising from claims under contracts for the transportation of household goods.

**3532.603 Applicability.**

When the Commission withholds payments due a contractor to satisfy a contractor's debt to the Government, the Debt Collection Act of 1982 and FAR subpart 32.6 apply. As a claim arising under a Government contract, any offset is governed by the Contract Disputes Act of 1979.

**3532.608 Negotiation of contract debts.****3532.608-70 Procedures.**

The Commission shall adhere to the following procedures prior to withholding a payment due a contractor to satisfy a debt owed by the contractor.

(a) The Commission shall use all proper means available for collecting a contract debt as rapidly as possible. This includes direct communication to obtain full payment or to negotiate an appropriate settlement.

(b) If the contractor fails to respond expeditiously and in good faith to contacts from the contracting officer, and if justifiable under the contract, the contracting officer shall promptly make a unilateral determination of the amount the contractor owes the Commission. The unilateral debt determination is made when neither payment nor a settlement has been reached. The unilateral debt determination is issued to the contractor by the contracting officer as a final decision under the Contract Disputes Act.

(c) A demand for payment of the contract debt shall be made contemporaneously with the contracting officer's issuance of the unilateral debt determination to the contractor.

**3532.610 Demand for payment of contract debt.**

(b) Demands for payment shall include, in addition to those items listed in FAR 32.610(b), the following:

(1) The offer of an opportunity to inspect and copy the records of the Commission related to the debt, 31 U.S.C. 3716(a)(2).

(2) The offer of an opportunity of a review of the Commission's decision relating to the debt, 31 U.S.C. 3716(3).

(3) The offer of an opportunity to enter into an agreement with the Commission to repay the amount of the debt.

(c) With respect to contracts for the transportation of household goods, claims by employees and, in turn, by the Commission, must be processed in a timely manner. The usual commercial terms for bills of lading require that any claim be filed against the contractor within nine months of shipment delivery. Government bills of lading are subject to these same rules and

conditions. FAR clause 52.247-23, which is included in contracts for the transportation of household goods, specifies that the contractors will be notified of any damages within a maximum of 45 days from date of delivery.

**Subpart 3532.7—Contract Funding****3532.705 Contract clauses.****3532.705-1 Clauses for contracting in advance of funds.**

In lieu of either of the clauses prescribed at FAR 32.705-1(a) and (b), the contracting officer may insert the clause at 3552.232-71, Availability of Funds, in solicitations and contracts—

(a) That are to be awarded in one fiscal year with performance to begin in the following fiscal year, or

(b) That are to extend into the following fiscal year, or

(c) In situations when the circumstances in paragraphs (a) and (b) of this subsection both apply.

**Subpart 3532.8—Assignment of Claims****3532.802 Conditions.**

(b) Panamanian firms may assign contracts to a local bank in accordance with recognized local banking practice.

**3532.806 Contract clause.**

(a) In addition to the clauses prescribed in FAR 32.806, the contracting officer may insert the clause at 3552.232-72, Presentation of Statement of Release from Claims, in solicitations and contracts when appropriate, unless the contract will prohibit the assignment of claims.

**Subpart 3532.9—Prompt Payment****3532.901 Applicability.**

In consonance with subpart 3570.1, Panamanian Preference, the Administrator has determined, pursuant to FAR 32.904, to extend coverage of the interest penalty provisions of FAR subpart 32.9 to contracts awarded to Commission vendors located in the Republic of Panama.

**PART 3533—PROTESTS, DISPUTES,  
AND APPEALS**

Sec.

3533.000 Scope of part.

**Subpart 3533.1—Protests**

3533.103 Protests to the agency.

3533.104 Protests to GAO.

**Subpart 3533.2—Disputes and Appeals**

3533.203 Applicability.

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

SOURCE: 55 FR 7659, Mar. 2, 1990, unless otherwise noted.

**3533.000 Scope of part.**

This part prescribes Commission policies and procedures for filing protests and for processing contract disputes and appeals.

**Subpart 3533.1—Protests**

**3533.103 Protests to the agency.**

(a) The cognizant Head of the Contracting Activity is the official designated to make the determination(s) required by FAR 33.103(a)(1), (2), or (3) whenever an award is contemplated notwithstanding the protest to the agency.

(c)(1) Protests to the Commission based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed with the contracting officer prior to bid opening or the closing date for receipt of initial proposals, or any extended bid opening or closing date for receipt of proposals.

(2) All other protests to the Commission shall be filed with the contracting officer not later than 10 working days after the basis of the protest is known or should have been known.

(d) The General Counsel shall review protests to the Commission as a matter of first priority, and advise the contracting officer expeditiously.

(e) The contracting officer shall decide protests to the Commission within 10 working days from receipt of a protest and promptly inform the protestor and other interested parties of that decision.

**3533.104 Protests to GAO.**

(a) *General.* Protests to the General Accounting Office (GAO) concerning Commission acquisitions shall be processed in accordance with FAR 33.104. The General Counsel shall prepare the report to GAO required at FAR 33.104(a)(5) and shall serve as the designated contact office for GAO. The contracting officer shall review protests to GAO as a matter of first priority, and shall advise, support, and furnish information to the General Counsel expeditiously.

**Subpart 3533.2—Disputes and Appeals**

**3533.203 Applicability.**

Pursuant to an interagency agreement between the Panama Canal Commission and the Corps of Engineers Board of Contract Appeals (ENGBCA), the ENGBCA will hear appeals from final decisions of Commission contracting officers issued pursuant to the Contract Disputes Act.

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 3536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### Subpart 3536.1—General

Sec.

- 3536.101 Applicability.  
3536.103 Methods of contracting.

#### Subpart 3536.2—Special Aspects of Contracting for Construction

- 3536.201 Evaluation of contractor performance.  
3536.203 Government estimate of construction costs.  
3536.207 Pricing fixed-price construction contracts.  
3536.207-70 Use of indefinite delivery contracts.  
3536.209 Construction contracts with architect-engineer firms.  
3536.270 Special aspects of contracting for construction in Panama.  
3536.270-1 General.  
3536.270-2 Special contract considerations.

#### Subpart 3536.3—Special Aspects of Sealed Bidding in Construction Contracting

- 3536.303 Invitations for bids.  
3536.370 Additive items.  
3536.371 Solicitation provisions.

#### Subpart 3536.5—Contract Clauses and Form

- 3536.570 Special Panama Canal Commission contract clauses.  
3536.571 Special Panama Canal Commission form.

#### Subpart 3536.6—Architect-Engineer Services

- 3536.602 Selection of firms for architect-engineer contracts.  
3536.602-2 Evaluation boards.  
3536.602-4 Selection authority.  
3536.602-5 Short selection processes for contracts not to exceed \$10,000.  
3536.604 Performance evaluation.  
3536.605 Government cost estimate for architect-engineer work.  
3536.606 Negotiations.  
3536.606-70 Modifications.  
3536.670 Government rights to plans, specifications, and drawings.

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

SOURCE: 55 FR 7660, Mar. 2, 1990, unless otherwise noted.

#### Subpart 3536.1—General

##### 3536.101 Applicability.

(a) Construction, which includes alteration, maintenance, and repair of real property, and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this part 3536 shall take precedence if the acquisition of architect-engineer services is involved.

##### 3536.103 Methods of contracting.

(a) Notwithstanding the exception in FAR 36.103(a) for contracts to be performed outside the United States, construction in Panama shall be acquired using sealed bid procedures, unless one of the four conditions in FAR 6.401(a) cannot be met. In that event, the contracting officer shall document the contract file in accordance with FAR 6.401.

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, FAR subpart 36.6, and subpart 3536.6 of this regulation.

#### Subpart 3536.2—Special Aspects of Contracting for Construction

##### 3536.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* The authorized representative of the contracting officer (COR) shall prepare the contractor performance report prescribed in FAR 36.201 within two weeks after final acceptance of the work or contract termination. Prior to submitting any report of unsatisfactory performance to the reviewing official, the COR shall advise the contractor of any proposed unsatisfactory rating and include any written comments from the contractor regarding such rating in the report (see FAR 36.201(a)(3)).

(b) *Review of performance reports.* The contracting officer shall review each performance report.

(c) *Distribution and use of performance reports.* Information from the performance report shall not be released outside of the Commission, except to other Government agencies at their written request, and on condition that the information will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with 35 CFR part 9.

**3536.203 Government estimate of construction costs.**

(c) The overall amount of the Government's estimate shall not be disclosed prior to award under any circumstance to persons other than Commission personnel whose official duties, as determined by the contracting officer, require knowledge of the estimate.

**3536.207 Pricing fixed-price construction contracts.**

**3536.207-70 Use of indefinite-delivery contracts.**

Any of the forms of indefinite-delivery contracts described in FAR subpart 16.5 may be used to contract for construction when deemed appropriate by the contracting officer.

**3536.209 Construction contracts with architect-engineer firms.**

No contract for construction shall be awarded to the firm, or its subsidiaries or affiliates, that designed the project except with the approval of the Head of Contracting Activity.

**3536.270 Special aspects of contracting for construction in Panama.**

**3536.270-1 General.**

In contracts which are entered into with Panamanian or other foreign contractors for performance in Panama, the term "United States" shall appear before the word "Government."

**3536.270-2 Special contract considerations.**

When construction is to be performed in the Republic of Panama by des-

ignated United States contractors, Panamanian contractors, or others, the solicitation and contract should include references to the applicable laws, regulations, treaties, and agreements of the United States and the Republic of Panama (see subpart 3525.8) relating to:

(a) The duty-free importation of material and equipment;

(b) The payment of taxes applicable to contractors, personnel, materials, and equipment (see parts 3525 and 3529);

(c) The applicability of workmen's compensation laws and other labor laws to citizens of the United States, citizens of Panama, and citizens of other countries (see subpart 3528.3);

(d) The provision of utility services;

(e) The provision of Commission or Government-owned materials or services;

(f) The disposition of surplus materials and equipment;

(g) The need for civil liability insurance for employees of contractors and subcontractors (see 3528.301);

(h) The handling of claims and litigation;

(i) The requirements for bid or proposal guarantees, performance bonds, and payment bonds (see subpart 3528.1);

(j) Acceptability of sureties not listed in Treasury Department Circular 570 (see subpart 3528.2);

(k) Consideration of Panamanian preference in accordance with part 3570;

(l) Any other special solicitation provisions prescribed in subpart 3536.3; and

(m) Any other problems which can be foreseen and appropriately resolved contractually.

**Subpart 3536.3—Special Aspects of Sealed Bidding in Construction Contracting**

**3536.303 Invitations for bids.**

**3536.370 Additive items.**

Prior to the issuance of an invitation for bids, the contracting officer shall ascertain that adequate funds have been certified as being available for the proposed acquisition. However, if funds

appear to be insufficient for all features of the Government's requirement, the contracting officer shall insert in the invitation a solicitation provision for a base bid and one or more additive items, as prescribed at 3536.371(a) (7) or (8).

**3536.371 Solicitation provisions.**

(a) The contracting officer shall insert the following provisions in invitations for bids for construction when applicable:

(1) The provision at 3552.214-70, Price—Sealed Bidding, as prescribed at 3514.201-6(a)(1);

(2) The provision at 3552.214-71, Additional Data To Be Submitted, as prescribed at 3514.201-6(b)(1);

(3) The provision at 3552.214-72, Rejection of Bids, as prescribed at 3514.201-6(b)(2);

(4) The provision at 3552.214-73, Caution—Sealed Bidding, as prescribed at 3514.201-6(a)(2);

(5) The provision at 3552.214-75, All or None Award—Sealed Bidding—Construction, as prescribed at 3514.201-6(d);

(6) The provision at 3552.236-70, Mailing of Correspondence and Bids, in all invitations for bids for construction;

(7) The provision at 3552.236-71, Additive Items, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in the numerical order of priority that the additive bid items appear in the bid schedule within the funds available;

(8) The provision at 3552.236-71, Additive Items—Alternate I, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in any combination within the funds available; and

(9) The provision at 3552.236-72, Cost Limitation, in invitations for bids for construction that contain one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

(b) The contracting officer shall insert the following provisions in negotiated solicitations for construction when applicable:

(1) The provision at 3552.215-70, Price, as prescribed at 3515.407(a)(1);

(2) The provision at 3552.215-71, Caution, as prescribed at 3515.407(a)(2); and

(3) The provision at 3552.215-72, All or None Award, as prescribed at 3515.407(b).

(c) The contracting officer shall insert the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure, in invitations for bids and negotiated solicitations for construction when applicable, as prescribed at 3509.508-1.

**Subpart 3536.5—Contract Clauses and Form**

**3536.570 Special Panama Canal Commission contract clauses.**

The contracting officer shall insert the following clauses in solicitations and contracts for construction when applicable:

(a) The clause at 3552.225-70, Language, as prescribed at 3525.801-76(a);

(b) The clause at 3552.225-71, Notice of Applicability of United States Federal Law, as prescribed at 3525.801-76(b);

(c) The clause at 3552.225-72, Designated Contractors, as prescribed at 3525.801-76(c);

(d) The clause at 3552.225-73, Responsibility for Observance of Laws, Orders, and Regulations, as prescribed at 3525.801-76(d);

(e) The clause at 3552.228-70, Bid Guarantee Amount, or the clause at 3552.228-75, Proposal Guarantee, as prescribed at 3528.101-3(a). If the proposal guarantee clause is used, the bid guarantee clause at FAR 52.228-1 shall not be used (see 3528.101-3(b));

(f) The clause at 3552.228-71, Bonds and Insurance, as prescribed at 3528.102-3;

(g) The clause at 3552.228-72, Bonds, as prescribed at 3528.102-3;

(h) In addition to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), the clause at 3552.228-73, Non-U.S. Workers' Compensation Insurance, as prescribed at 3528.309(a);

(i) The clause at 3552.228-74, Special Panama Insurance, as prescribed at 3528.370;

(j) In addition to FAR clause 52.232-5, Payments Under Fixed-Price Construction Contracts, the clause at 3552.232-70, Contract Payments, as prescribed at

3532.111(a)(7), the clause at 3552.232–72, Presentation of Statement of Release from Claims, as prescribed at 3532.806(a), and the clause at 3552.232–73, Invoices, as prescribed at 3532.111(a)(8);

(k) The clause at 3552.236–73, Scope of Work, in all solicitations and contracts for construction;

(l) In addition to FAR clause 52.236–10, Operations and Storage Areas, the clause at 3552.236–74, Work Sites, Yards, Shops, and Offices, when a fixed-price construction contract is contemplated;

(m) The clause at 3552.236–75, Work Time Limitations, in all solicitations and contracts for construction;

(n) In lieu of FAR clause 52.236–13, Accident Prevention, insert the clause at 3552.236–76, Accident Prevention, when a fixed-price construction contract is contemplated;

(o) The clause at 3552.236–77, Working in Confined Spaces, when the contracting officer anticipates that the contractor may have to work in confined or enclosed spaces;

(p) The clause at 3552.236–78, Safety Sign, when the contracting officer determines that the location of the work site warrants its inclusion;

(q) The clause at 3552.236–79, Protection of Material and Work, in all solicitations and contracts for construction;

(r) The clause at 3552.236–80, Toilet Facilities, when the contracting officer determines that the location of the work site warrants its inclusion;

(s) The clause at 3552.236–81, Drinking Water, when the contracting officer determines that the location of the work site warrants its inclusion;

(t) In addition to FAR clause 52.236–15, Schedules for Construction Contracts, the clause at 3552.236–82, Contract Bid Breakdown, when a fixed-price construction contract is contemplated and the period of actual work performance is expected to exceed 60 days;

(u) In addition to FAR clause 52.236–21, Specifications and Drawings for Construction, and FAR clause 52.236–5, Material and Workmanship, the clauses at: 3552.236–83, Descriptive Data and Correspondence, 3552.236–84, Instruction Books, and 3552.236–85, Record Drawings, when a fixed-price construction contract is contemplated;

(v) The clause at 3552.236–86, Restricted Areas, when the contracting officer anticipates that any portion of the contract work may have to be performed in a restricted area;

(w) The clause at 3552.243–70, Modification Proposals—Price Breakdown, as prescribed at 3543.205;

(x) The clause at 3552.244–70, Subcontractors, in all solicitations and contracts for construction;

(y) The clause at 3552.236–87, Surplus Space, in all solicitations and contracts for construction. The clause may also be used in solicitations and contracts for supplies or services if the contracting officer determines that its use is appropriate.

(z) The clause at 3552.209–71, Organizational Conflict of Interest, as prescribed at 3509.508–2.

#### **3536.571 Special Panama Canal Commission form.**

Panama Canal Form 3062, Submittal Data For Approval, shall be used by contractors as a transmittal document when data and/or samples are to be submitted for the contracting officer's approval pursuant to FAR clause 52.236–5 or clause 3552.236–83 of this regulation.

### **Subpart 3536.6—Architect-Engineer Services**

#### **3536.602 Selection of firms for architect-engineer contracts.**

##### **3536.602–2 Evaluation boards.**

(a) The Panama Canal Commission Architect-Engineer Evaluation Board is established as a central board within the Commission under authority delegated to the Director, Engineering and Construction Bureau. The Board shall perform all Commission architect-engineer evaluations, data collection, and files maintenance. The Commission Board shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Board:

(1) Member and Chairman—A designee of the Chief, Engineering Division;

(2) Member—A professional engineer or architect from a division of one of the Commission's other bureaus, to be designated by the Chairman;

(3) Member—A program official initiating the requirement or a designated representative; and

(4) Advisory Member—A contracting officer or representative.

(b) The Chief, Engineering Division may appoint additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairman, an alternate experienced in architecture, engineering, or construction to serve in the member's absence.

(d) The duties of the advisory member shall include, but not be limited to, assuring that—

(1) The criteria set forth in the public notice are applied in the evaluation process; and

(2) Actions taken during the evaluation process do not compromise subsequent procurement actions.

#### **3536.602-4 Selection authority.**

The Director, Engineering and Construction Bureau shall serve as the Commission's selection authority for the evaluation board.

#### **3536.602-5 Short selection processes for contracts not to exceed \$10,000.**

Both short selection processes permitted by FAR 36.602-5 are authorized.

#### **3536.604 Performance evaluation.**

Evaluation of architect-engineer contracts shall be in accordance with the procedures prescribed in 3536.201, except that SF 1421, Performance Evaluation (Architect-Engineer), shall be used in lieu of SF 1420, and that a copy of the performance evaluation shall be provided to the Architect-Engineer Evaluation Board for its files pursuant to FAR 36.604(c).

#### **3536.605 Government cost estimate for architect-engineer work.**

(b) The overall amount of the Government's cost estimate shall not be disclosed under any circumstance to persons other than Government person-

nel whose official duties, in the judgment of the contracting officer, require knowledge of the estimate.

#### **3536.606 Negotiations.**

(a) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, has been obtained. When the negotiations result in a price in excess of the Government estimate, as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(1) In no event shall a contract for architect-engineer services for the preparation of designs, plans, drawings and specifications exceed the statutory limitation of six percent (6 percent) of the estimated construction costs of the project. If the contract also covers any type of services other than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6 percent) limitation.

#### **3536.606-70 Modifications.**

When a modification involves work not initially included in the contract, the limitation on the total contract price set forth in 3536.606(a)(1) is applicable, as applied to the revised total estimated construction costs. When redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6 percent) statutory limitation is not exceeded:

(a) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(b) The contract cost for the original design will be added to the contract cost for redesign; and

(c) The total contract design cost obtained by paragraph (b) of this subsection will be divided by the total construction cost obtained by paragraph (a) of this subsection. The resulting percentage may not exceed the six percent (6 percent) statutory limitation.

**3536.670 Government rights to plans, specifications, and drawings.**

All solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those involving "standard types of construction", shall contain the clause at 3552.227-70, Government Rights, as prescribed at 3527.304-3(b).

### PART 3537—SERVICE CONTRACTING

Sec.

3537.000 Scope of part.

#### Subpart 3537.1—Service Contracts— General

3537.102 Policy.

3537.104 Personal services contracts.

3537.104-70 Procedures.

#### Subpart 3537.2—Advisory and Assistance Services

3537.200 Scope of subpart.

3537.202 Policy.

3537.204 Exclusions.

3537.206 Requesting activity responsibilities.

3537.206-70 Procedures.

3537.270 Duration.

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

SOURCE: 55 FR 7662, Mar. 2, 1990, unless otherwise noted.

**3537.000 Scope of part.**

This part implements FAR part 37 and provides additional Commission policies and procedures for the acquisition of personal and nonpersonal services, including advisory and assistance services.

#### Subpart 3537.1—Service Contracts—General

**3537.102 Policy.**

(a) The Commission's policy regarding the contracting out of commercial services is set forth at 3507.301.

**3537.104 Personal services contracts.**

(b) Authority for the acquisition by contract of the personal services of experts and consultants is found at 5 U.S.C. 3109 which provides that, when authorized by an appropriation or

other statute, the head of an agency may acquire by contract the temporary (not to exceed one year) or intermittent services of experts or consultants. For the purpose of this section, the terms "experts" and "consultants" are not interchangeable. Consequently, their meanings are distinguishable from the meaning of the collective term "Individual experts and consultants" at FAR 37.203(a). As used herein, an "expert" is an individual who is a recognized professional or highly skilled practitioner normally used to perform or supervise an operating function, rather than to provide advisory or consulting services. A "consultant", as used herein, is an individual possessing special, current knowledge or skill who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function. Acquiring the personal services of individual experts or consultants shall be subject to the limitations applicable to advisory and assistance services at FAR 37.202(c). In addition, the services of individual experts and consultants shall be acquired through personal services contracts only—

(1) When the services required cannot be obtained by appointment in accordance with standard Commission personnel procedures, and

(2) If the nature of the duties to be performed is temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no such contract shall be entered into for longer than one year at a time.

**3537.104-70 Procedures.**

Requests for the acquisition of personal services should include:

(a) A description of the services to be performed;

(b) Name and address of the person or firm;

(c) Background material to show the unique qualifications of such person or firm to accomplish the requirement;

(d) Place where the duties are to be performed and the period of service;

(e) The estimated cost; and

(f) Determinations that:

(1) It is not feasible to obtain personnel with the necessary skills through

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standard Commission personnel appointment procedures;

(2) A nonpersonal services contract is not practicable; and

(3) Existing staffing is inadequate to furnish the services.

### Subpart 3537.2—Advisory and Assistance Services

#### 3537.200 Scope of subpart.

This subpart provides additional policy and management controls for the acquisition of personal and nonpersonal advisory and assistance services.

#### 3537.202 Policy.

(d) The acquisition of advisory and assistance services shall conform to the Competition in Contracting Act of 1984. Preference shall, however, be given to sources located in the Republic of Panama when the services are available as required and are comparable in quality and price to those which may be obtained from other sources (see part 3570). However, see subpart 3503.6 concerning contracts with current or former Commission employees.

#### 3537.204 Exclusions.

In addition to the exclusions or exemptions identified at FAR 37.204, the services of arbitrators for the resolution of labor disputes are exempted from the definition of advisory and assistance services. As authorized by section 7121 of the Federal Service Labor-Management Relations Act, 5 U.S.C. 7121, the procedure for the contracting of arbitrators shall be governed by the negotiated grievance procedure set forth in the individual collective bargaining agreements between the Commission and the various certified representatives (i.e., unions).

#### 3537.206 Requesting activity responsibilities.

(c) Requests for the acquisition of advisory and assistance services shall include the documentation required at FAR 37.206 (a), (b), and (d), and shall be prepared by the initiating bureau director or head of independent unit and forwarded to the Administrator for approval, through, in turn, the Personnel Director; General Counsel; Chief Finan-

cial Officer; and the General Services Director for their review and concurrence. Before the proposal is routed to the Administrator, the General Services Director will add the cognizant contracting officer's determination as to whether or not the requested acquisition constitutes advisory and assistance services as described in FAR subpart 37.2. As mandated by FAR 37.207, the contracting officer's determination shall be final.

[55 FR 7662, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

#### 3537.206-70 Procedures.

(a) When a request has been approved pursuant to 3537.206(c), the initiating bureau director or head of independent unit shall—

(1) Forward all papers to the cognizant contracting officer for processing the contract action. If not already included in the request for approval, the forwarding official shall provide the contracting officer with a work statement that is specific and complete, including: a detailed description of services to be performed; the place where the services are to be performed; the period of performance; the names and addresses of potential contractors (if applicable); and any other information the contracting officer considers to be pertinent.

(2) Coordinate with the Director, Office of Executive Administration or the contracting officer, as applicable, to obtain certification as a Panama Canal Commission designated contractor, entry/exit permits, identification cards, and any other required legal documents.

(3) Prepare replies to all inquiries from the General Accounting Office, the Office of Management and Budget, and the Congress, in coordination with the Personnel Director, Chief Financial Officer, General Counsel and the contracting officer, as may be necessary.

(b) At the conclusion of the contract, the initiating bureau director or head of independent unit shall furnish to the contracting officer the written evaluation required at FAR 37.205.

#### 3537.270 Duration.

No contract for advisory and assistance services shall be entered into for

3537.270

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longer than one year at a time. In unusual circumstances, and when approved by the Administrator, options for additional one-year extensions may be used when the need for continuity of

services carries beyond a one-year period. In no case shall the total period under a specific contract exceed the basic year plus four additional optional years.

## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 3542—CONTRACT ADMINISTRATION

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

#### Subpart 3542.12—Novation and Change-of-Name Agreements

##### **3542.1200-70 Policy.**

When "CORPORATE SEALS," as required in the instructions for preparation and execution of novation agreements in FAR 42.1204 and in agreements to recognize contractor's change of name in FAR 42.1205, are not used due to the dictates of custom, practice, or law within the Republic of Panama or other foreign countries, the contracting officer may execute such agreements, provided the contracting officer, with the concurrence of legal counsel, is satisfied that the persons signing such agreements are authorized to bind their companies.

[55 FR 7663, Mar. 2, 1990]

### PART 3543—CONTRACT MODIFICATIONS

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

#### Subpart 3543.2—Change Orders

##### **3543.205 Contract clauses.**

The contracting officer shall insert the clause at 3552.243-70, Modification Proposals—Price Breakdown, in all solicitations and contracts for construction.

[55 FR 7664, Mar. 2, 1990]

### PART 3547—TRANSPORTATION

#### Subpart 3547.3—Transportation in Supply Contracts

Sec.

3547.306 Transportation factors in the evaluation of offers.

3547.370 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

#### Subpart 3547.3—Transportation in Supply Contracts

##### **3547.306 Transportation factors in the evaluation of offers.**

For purposes of evaluating comparability of costs of supplies obtainable in the Republic of Panama with those obtainable from other sources, pursuant to the Panamanian preference provisions of the Panama Canal Treaty's Implementing Agreement (see part 3570), consideration shall be given to transportation costs to the Republic of Panama, including freight, insurance and handling of supplies.

[55 FR 7664, Mar. 2, 1990]

##### **3547.370 Solicitation provision.**

The contracting officer shall insert the provision at 3552.247-70, Evaluation of Delivery Terms in Contract Awards, in solicitations that include alternate terms of delivery, i.e., f.o.b. destination (New Orleans) and c.i.f. destination (Panama).

[55 FR 7664, Mar. 2, 1990]

### PART 3551—USE OF GOVERNMENT SOURCES BY CONTRACTORS

#### Subpart 3551.1—Contractor Use of Government Supply Sources

Sec.

3551.102 Authorization to use Government supply sources.

3551.103 Ordering from Government supply sources.

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

#### Subpart 3551.1—Contractor Use of Government Supply Sources

##### **3551.102 Authorization to use Government supply sources.**

(a) When a contractor is performing one of the types of contracts specified in FAR 51.101, the contracting officer shall consider whether to allow the contractor to use Government supply sources. In addition to the factors listed for consideration at FAR 51.102(a), the contracting officer shall consider whether—

**3551.103**

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(1) Materials necessary to the performance of the contract are not available locally except at Government sources; and

(2) Materials, though available to the contractor, require such a long lead time for delivery that contractor performance is threatened if Government sources are not used.

(e)(4) In those instances where contractor-furnished equipment and materials required by a contract have been authorized by the contracting officer to be obtained through Government sources as Government-furnished

equipment and materials, for reasons established by FAR part 51, the contracting officer shall negotiate a change to the contract reducing the price by the commercial cost plus transportation costs.

[55 FR 7664, Mar. 2, 1990]

**3551.103 Ordering from Government supply sources.**

(b) "Contracting agency" as used in FAR 51.103(b) shall mean the cognizant Commission contracting officer.

[55 FR 7664, Mar. 2, 1990]

## SUBCHAPTER H—CLAUSES AND FORMS

## PART 3552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## Subpart 3552.2—Texts of Provisions and Clauses

Sec.	
3552.209-70	Organizational Conflict of Interest Certification/Disclosure.
3552.209-71	Organizational Conflict of Interest.
3552.210-70	Brand Name Products or Equal.
3552.214-70	Price—Sealed Bidding.
3552.214-71	Additional Data To Be Submitted.
3552.214-72	Rejection of Bids.
3552.214-73	Caution—Sealed Bidding.
3552.214-74	All or None Award—Sealed Bidding.
3552.214-75	All or None Award—Sealed Bidding—Construction.
3552.215-70	Price.
3552.215-71	Caution.
3552.215-72	All or None Award.
3552.225-70	Language.
3552.225-71	Notice of Applicability of United States Federal Law.
3552.225-72	Designated Contractors.
3552.225-73	Responsibility for Observance of Laws, Orders, and Regulations.
3552.227-70	Government Rights.
3552.228-70	Bid Guarantee Amount.
3552.228-71	Bonds and Insurance.
3552.228-72	Bonds.
3552.228-73	Non-U.S. Workers' Compensation Insurance.
3552.228-74	Special Panama Insurance.
3552.228-75	Proposal Guarantee.
3552.228-76	Performance Bond.
3552.228-77	Performance and Payment Bonds.
3552.231-70	Travel Costs.
3552.232-70	Contract Payments.
3552.232-71	Availability of Funds.
3552.232-72	Presentation of Statement of Release From Claims.
3552.232-73	Invoices.
3552.236-70	Mailing of Correspondence and Bids.
3552.236-71	Additive Items.
3552.236-72	Cost Limitation.
3552.236-73	Scope of Work.
3552.236-74	Work Sites, Yards, Shops, and Offices.
3552.236-75	Work Time Limitations.
3552.236-76	Accident Prevention.
3552.236-77	Working in Confined Spaces.
3552.236-78	Safety Sign.
3552.236-79	Protection of Material and Work.
3552.236-80	Toilet Facilities.
3552.236-81	Drinking Water.

3552.236-82	Contract Bid Breakdown.
3552.236-83	Descriptive Data and Correspondence.
3552.236-84	Instruction Books.
3552.236-85	Record Drawings.
3552.236-86	Restricted Areas.
3552.236-87	Surplus Space.
3552.243-70	Modification Proposals—Price Breakdown.
3552.244-70	Subcontractors.
3552.247-70	Evaluation of Delivery Terms in Contract Awards.

AUTHORITY: 40 U.S.C. 486(c); Articles IX and XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7664, Mar. 2, 1990, unless otherwise noted.

## Subpart 3552.2—Texts of Provisions and Clauses

**3552.209-70 Organizational Conflict of Interest Certification/Disclosure.**

As prescribed in 3509.508-1, insert the following provision:

ORGANIZATIONAL CONFLICT OF INTEREST  
CERTIFICATION/DISCLOSURE (JAN 1990)

(a) An "organizational conflict of interest" exists when the nature of the work to be performed under a proposed Government contract may, without some restriction on future activities, (1) result in an unfair competitive advantage to the contractor, or (2) impair the contractor's objectivity in performing the contract work.

(b) The offeror certifies, to the best of its knowledge and belief, that it [ ] is, [ ] is not (check applicable block) aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement with its offer which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(c) The offeror should refer to FAR subpart 9.5 and PAR subpart 3509.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(d) If the Contracting Officer determines that a potential conflict exists, the offeror shall not receive an award unless the conflict

can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

**3552.209-71 Organizational Conflict of Interest.**

As prescribed in 3509.508-2, insert the following clause:

ORGANIZATIONAL CONFLICT OF INTEREST (JAN 1990)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief: (1) There are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in provision 3552.209-70, Organizational Conflict of Interest Certification/Disclosure, of the solicitation; or (2) That the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies—The Panama Canal Commission may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The contractor further agrees to insert in any subcontract or consultant agreement hereunder, terms which shall conform substantially to the language of this clause, including this paragraph (d).

(End of clause)

**3552.210-70 Brand Name Products or Equal.**

As prescribed in 3510.011(h), insert the following provision:

BRAND NAME PRODUCTS OR EQUAL (JAN 1990)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this (*invitation for bids/request for proposals*) have been identified in the schedule by a "brand name or equal" description, such identification is characteristic of products that will be satisfactory. (*Bids/Proposals*) offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the (*bids/proposals*) and are determined by the Government to meet fully the salient characteristics, requirements listed in the invitation.

(b) Unless the (*bidder/offeror*) clearly indicates in its (*bid/proposal*) that it is offering an "equal" product, its (*bid/proposal*) shall be considered as offering a brand name product referenced in the (*invitation for bids/request for proposals*).

(c)(1) If the (*bidder/offeror*) proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space identified in the (*bid/proposal*). The evaluation of (*bids/proposals*) and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the (*bidder/offeror*) or identified in its (*bid/proposal*) as well as other information reasonably available to the purchasing activity. Caution to (*bidders/offerors*): the purchasing activity is not responsible for locating or securing any information which is not identified in the (*bid/proposal*) and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the (*bidder/offeror*) shall furnish as part of its (*bid/proposal*) all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirement of the (*invitation for bids/request for proposals*), and (ii) establish exactly what the (*bidder/offeror*) proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the (*bidder/offeror*) proposes to modify a product so as to make it conform to the requirements of the (*invitation for bids/request for proposals*). It shall (i) include in its (*bid/proposal*) a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after (*bid/proposal*) opening to make a product conform to a brand name product referenced in the (*invitation for bids/request for proposals*) will not be considered.

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(End of provision)

### **3552.214-70 Price—Sealed Bidding.**

As prescribed in 3514.201-6(a)(1), insert the following provision:

PRICE—SEALED BIDDING (JAN 1990)

Only bids stating a firm, fixed-price expressed in U.S. dollars shall be considered for award. Bids that qualify the bid price in terms of the rate of exchange between U.S. dollars and a foreign currency will be rejected as nonresponsive.

(End of provision)

### **3552.214-71 Additional Data To Be Submitted.**

As prescribed in 3514.201-6(b)(1), insert the following provision:

ADDITIONAL DATA TO BE SUBMITTED (JAN 1990)

Prior to award of the contract, the Contracting Officer may require the apparent low bidder to furnish the following information:

(a) Evidence establishing that the bidder maintains a permanent place of business and has satisfactory and acceptable financial resources to meet obligations incident to the work.

(b) A brief description of work experience by the bidder and the location of major projects.

(c) A list of key personnel which the bidder has available for prosecution of the work to be performed, and a brief summary of such personnel's experience in work similar to that required by this contract.

(d) A complete list and description of all equipment, shops, yards, and storage facilities that the bidder now has or will have available for commencement and prosecution of the work.

(e) Evidence establishing that the bidder positively meets responsibility requirements, such as experience, which are included in the solicitation.

(End of provision)

### **3552.214-72 Rejection of Bids.**

As prescribed in 3514.201-6(b)(2), insert the following provision:

REJECTION OF BIDS (JAN 1990)

Any bid will be rejected that is conditioned upon or proposes that the Panama Canal Commission agree to the use of a price adjustment clause calling for an upward revision of the bid price or to the use of a cost-plus-fixed-fee or comparable pricing arrangement. The right is reserved, as the interest

of the Panama Canal Commission may require, to reject any and all bids and to waive any informality in the bids. A bid may be rejected if the bidder fails to furnish a guaranty and submit the data required with the bid; or if the bidder cannot show to the satisfaction of the Contracting Officer that it has the experience and owns or controls by firm option, or can procure the necessary plant to commence work within the time prescribed in the specifications and, thereafter, to prosecute and complete the work at the rate or time specified; or if the bidder cannot show that he is not already obligated to perform other work contemplated in this Solicitation. Any unbalanced bid which, in the opinion of the Contracting Officer, jeopardizes the interests of the Panama Canal Commission will be subject to rejection for that reason.

(End of provision)

### **3552.214-73 Caution—Sealed Bidding.**

As prescribed in 3514.201-6(a)(2), insert the following provision:

CAUTION—SEALED BIDDING (JAN 1990)

Bidders are cautioned that any condition, qualification, provision, or comment in their bid, or in a letter transmitting their bid, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions, or provisions of this solicitation, may require the rejection of their bid as non-responsive.

(End of provision)

### **3552.214-74 All or None Award—Sealed Bidding.**

As prescribed in 3514.201-6(c), insert the following provision:

ALL OR NONE AWARD—SEALED BIDDING (JAN 1990)

Notwithstanding paragraph (c) of provision 52.214-10, Contract Award—Sealed Bidding, award will be made on an "all or none" basis to one bidder for all items, in the quantities and at the unit prices specified for each item. Consequently, for the purpose of determining the most advantageous bid in accordance with paragraph (a) of provision 52.214-10, the word "price" as used therein shall be construed to mean the bidder's aggregate price for all items. Any bid which fails to quote on all items, in the quantities specified for each item, shall be rejected as non-responsive.

3552.214-75

(End of provision)

**3552.214-75 All or None Award—Sealed Bidding—Construction.**

As prescribed in 3514.201-6(d)(1), insert the following provision:

ALL OR NONE AWARD—SEALED BIDDING—  
CONSTRUCTION (JAN 1990)

Regarding paragraph (c) of provision 52.214-19, Contract Award—Sealed Bidding—Construction, award will be made on an “all or none” basis to one bidder for all items. Consequently, for the purpose of determining the most advantageous bid in accordance with paragraph (a) of provision 52.214-19, the word “price” as used therein shall be construed to mean the bidder’s aggregate price for all items. As indicated in paragraph (c) of provision 52.214-18, Preparation of Bids—Construction, failure to bid on all items will disqualify the bid.

(End of provision)

*Alternate I (Jan 1990)*

If the construction work is not estimated to exceed \$10,000, substitute the following text in place of the basic text:

A contract award will be made on an “all or none” basis to one bidder for all items at the prices specified for each item. The award will be made, without discussions, to the overall low, responsible bidder whose bid, conforming to the solicitation, will be the most advantageous to the Government considering only the bidder’s aggregate price for all items and the price-related factors, if any, specified elsewhere in the solicitation. Consequently, bidders are required to bid on all items. Failure to do so will disqualify the bid.

*Alternate II (Jan 1990)*

If the contracting officer determines that (a) the contract work, regardless of its estimated value, will be awarded to one bidder for all the work, and (b) bidding on all items will not be required, substitute the following text in place of the basic text:

A contract award will be made on an “all or none” basis to one bidder for all the contract work. The award will be made, without discussions, to the overall low, responsible bidder whose bid, conforming to the solicitation, will be the most advantageous to the Government considering only the bidder’s aggregate price for all items and the price-related factors, if any, specified elsewhere in the solicitation.

**3552.215-70 Price.**

As prescribed in 3515.407(a)(1), insert the following provision:

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PRICE (JAN 1990)

Only offers stating a firm-fixed-price expressed in U.S. dollars shall be considered for award. Offers that qualify the offer price in terms of the rate of exchange between U.S. dollars and a foreign currency will be rejected as nonresponsive.

(End of provision)

**3552.215-71 Caution.**

As prescribed in 3515.407(a)(2), insert the following provision:

CAUTION (JAN 1990)

Offerors are cautioned that any condition, qualification, provision, or comment in their offer, or in a letter transmitting their offer, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions, or provisions of this solicitation, may require the rejection of their offer as non-responsive.

(End of provision)

**3552.215-72 All or None Award.**

As prescribed in 3515.407(b), insert the following provision:

ALL OR NONE AWARD (JAN 1990)

Notwithstanding paragraph (d) of provision 52.215-16, Contract Award, a contract award will be made on an “all or none” basis to one offeror for all items, in the quantities and at the unit prices specified for each item. Consequently, for the purpose of determining the most advantageous offer in accordance with paragraph (a) of provision 52.215-16, the words “cost or price” as used therein shall be construed to mean the offeror’s aggregate cost or price for all items. Therefore, offerors are cautioned to quote on all items, in the quantities specified for each item. Failure to do so will, in effect, eliminate the offeror from consideration for contract award in the event a contract is to be awarded on the basis of initial offers received without discussions, pursuant to paragraph (c) of provision 52.215-16.

(End of provision)

**3552.225-70 Language.**

As prescribed in 3525.801-76(a), Language, insert the following clause:

LANGUAGE (JAN 1990)

All offers, correspondence and documents required by this solicitation or contract must be submitted in the English language. In the event of inconsistency between any terms of this solicitation or contract and

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any translation thereof into another language, the English language meaning shall control.

(End of clause)

**3552.225-71 Notice of Applicability of United States Federal Law.**

As prescribed in 3525.801-76(b), insert the following clause:

NOTICE OF APPLICABILITY OF UNITED STATES FEDERAL LAW (JAN 1990)

All matters relating to the validity, construction, interpretation, performance and enforcement of the contract shall be determined in accordance with applicable federal law of the United States of America.

(End of clause)

**3552.225-72 Designated Contractors.**

As prescribed in 3525.801-76(c), insert the following clause:

DESIGNATED CONTRACTORS (JAN 1990)

Article XI, "Contractors and Contractors' Personnel," of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977, prescribes, among other things, that—

(a) Whenever contracts are awarded by the Commission to natural persons who are nationals or permanent residents of the United States or to corporations or other legal entities organized under the laws of the United States and under the effective control of such persons, such contractors shall be so designated by the United States and such designations shall be communicated to the authorities of the Republic of Panama.

(b) Designated contractors shall be subject to the laws and regulations of the Republic of Panama except with respect to the special provisions established by the above named international agreement, which enumerate such obligations and benefits as, among others:

(1) Designated contractors must, while in Panama, engage exclusively in the work for which they have been contracted by U.S. Government agencies; and,

(2) Designated contractors shall be accorded the same rights established for U.S. citizens employed by the U.S. Government in Panama pertaining to Panamanian immigration requirements, relief from the payment of certain Panamanian taxes and duties, and the use of certain facilities located on U.S. military installations in Panama.

(c) The provisions of Article XI shall be similarly applied to the subcontractors and to the employees of the contractors and subcontractors and their dependents who are nationals or residents of the United States. These employees and dependents shall not be

subject to the Panamanian Social Security System.

(d) Upon withdrawal of the designation of a contractor, the Commission shall notify the authorities of the Republic of Panama.

(End of clause)

**3552.225-73 Responsibility for Observance of Laws, Orders, and Regulations.**

As prescribed in 3525.801-76(d), insert the following clause:

RESPONSIBILITY FOR OBSERVANCE OF LAWS, ORDERS, AND REGULATIONS (JAN 1990)

The Contractor shall be responsible for complying with all applicable laws, regulations, standards and requirements, including traffic and vehicular laws and regulations, prescribed by the Republic of Panama for contractors performing work for the Panama Canal Commission (hereinafter referred to as the Commission). The Contractor shall similarly be responsible for complying with all laws, Executive Orders, and United States Government rules and regulations which the Commission, as an agency of the United States Government performing work in the Republic of Panama, is required to follow. The areas of legal competence have been agreed to between both countries pursuant to and in accordance with the Panama Canal Treaty of 1977, including such executive agreements and implementing legislation as may be in effect. Failure of the Contractor to familiarize himself with all laws, orders, rules, regulations or standards promulgated by either country, which are or may become applicable to the work under this contract, shall not constitute a basis for adjustments under the contract.

(End of clause)

**3552.227-70 Government Rights.**

As prescribed in 3527.304-3(b), insert the following clause:

GOVERNMENT RIGHTS (JAN 1990)

The Contractor may retain the entire right, title, and interest, throughout the world, to all drawings, designs, specifications, notes, and other works developed in the performance of this contract, provided that the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to have and to use same on any other Government design or construction, and provided that the Contractor shall execute or have executed, upon request, and shall promptly deliver to the Federal agency, all instruments necessary to establish or to confirm said license.

(End of clause)

**3552.228-70 Bid Guarantee Amount.**

As prescribed in 3528.101-3(a), insert the following clause:

BID GUARANTEE AMOUNT (JAN 1990)

(a) The amount of the bid guarantee required by clause 52.228-1, Bid Guarantee, shall be 20 percent of the total amount of the bid, excluding options and additives if any, or \$3,000,000, whichever is less.

(b) If the bidder elects to furnish the guarantee in the form of a bid bond, the bond shall be submitted on Standard Form 24. Corporations executing the bond as sureties must be among those appearing on the current U.S. Treasury Department Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(End of clause)

**3552.228-71 Bonds and Insurance.**

As prescribed in 3528.102-3, insert the following clause:

BONDS AND INSURANCE (JAN 1990)

The bidder who is awarded the contract shall be required to furnish performance and payment bonds, certificates of Workman's Compensation, if required, and public liability and automobile insurance as stipulated in the General Conditions. The payment by the Commission of the bond premiums to the Contractor shall not be made as increments of the individual progress payments and shall not be in addition to the contract price.

(End of clause)

**3552.228-72 Bonds.**

As prescribed in 3528.102-3, insert the following clause:

BONDS (JAN 1990)

(a) Corporations executing the bond as sureties must be among those appearing either on the Panama Canal Commission's list of locally acceptable sureties or on the U.S. Treasury Department's Circular 570, and must be acting within the limitations set forth therein.

(b) *Payment Bond:* If the contract exceeds \$2,000, the Contractor shall furnish a payment bond with good and sufficient surety or

sureties acceptable to the Commission for the protection of persons furnishing material or labor in connection with the performance of the work under this contract on Standard Form 25-A. The penal sum of such payment bond shall be as follows: (1) When the contract price is \$1,000,000 or less, 50 percent of the contract price; (2) when the contract price is in excess of \$1,000,000, but no more than \$5,000,000, 40 percent of the contract price; (3) or \$2,500,000 when the contract price is more than \$5,000,000.

(c) *Performance Bond:* If the contract exceeds \$2,000, the Contractor shall furnish a performance bond with good and sufficient surety or sureties acceptable to the Commission in connection with the performance of the work under this agreement on Standard Form 25. The penal sum of such performance bond shall be 100 percent of the contract price.

(d) The bonds herein shall not be dated prior to the date of the contract and shall be furnished by the Contractor to the Commission not later than 10 calendar days after award.

(End of clause)

**3552.228-73 Non-U.S. Workers' Compensation Insurance.**

As prescribed in 3528.309(a), insert the following clause:

NON-U.S. WORKERS' COMPENSATION  
INSURANCE (JAN 1990)

(a) Pursuant to a waiver granted by the Secretary of Labor, the provisions of the Defense Base Act (see clause 52.228-3) are not applicable to any public-work contract awarded by the Panama Canal Commission in the Panama Canal area with respect to non-U.S. citizen employees of Commission contractors. The waiver does not apply, however, to such employees who are:

(1) Hired in the United States by any contractor; or

(2) Residents of the United States.

(b) The waiver was granted with the proviso that non-U.S. citizen employees exempted from the provisions of the Defense Base Act by virtue of the waiver will be provided workers' compensation benefits prescribed in the Panamanian Social Security System. Accordingly, the Contractor shall provide workmen's insurance coverage (Seguros de Riesgos Profesionales) as provided by the Panamanian Social Security System in accordance with Cabinet Decree No. 68 of March 31, 1970, for all non-U.S. citizen employees that are not covered by clause 52.228-3 of this contract. The Seguro de Riesgos Profesionales coverage shall be provided before the Contractor commences performance and shall be maintained until performance is completed.

(End of clause)

**3552.228-74 Special Panama Insurance.**

As prescribed in 3528.370, insert the following clause:

SPECIAL PANAMA INSURANCE (JAN 1990)

(a) "Designated contractors" shall, upon initiation of work or construction activities, obtain appropriate insurance to cover civil liabilities in the Republic of Panama that may arise as a result of acts or omissions done in the performance of official duty by their employees. The insurance coverage shall include coverage for the tortious conduct of their employees. Such insurance may be obtained from insurance companies licensed to engage in such business within the Republic of Panama.

(b) The Contractor shall include this clause in all subcontracts.

(End of clause)

**3552.228-75 Proposal Guarantee.**

As prescribed in 3528.101-3 (a) and (b), insert the following clause:

PROPOSAL GUARANTEE (JAN 1990)

(a) Failure to furnish a guarantee in the proper form and amount, by the time set for the receipt of offers, may be cause for rejection of the proposal.

(b) The offeror shall furnish a guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The amount of this guarantee shall be 20 percent of the total amount of the proposal price, excluding options and additives if any, or \$3,000,000, whichever is less. The Contracting Officer will return guarantees, other than bid bonds, (1) to unsuccessful offerors as soon as practicable after the completion of the evaluation process, and (2) to the successful offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the proposal as accepted.

(c) If the successful offeror, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) Unless otherwise specified in the proposal, the offeror will (1) allow 60 days for acceptance of its proposal, and (2) give bond within 10 days after receipt of the forms by the offeror.

(e) In the event the contract is terminated for default, the Contractor is liable for any cost of acquiring the work that exceeds the amount of its proposal, and the proposal guarantee is available to offset the difference.

(f) Regarding paragraph (b) of this clause, if a bid bond is furnished, it must be submitted on Standard Form 24. Corporations executing the bond as sureties must be among those appearing on the U.S. Treasury Department's Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies", and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(End of clause)

**3552.228-76 Performance Bond.**

As prescribed in 3528.103-70(a), insert the following clause:

PERFORMANCE BOND (JAN 1990)

(a) The Contractor shall furnish a performance bond with good and sufficient surety or sureties in connection with the work under this contract on Standard Form 25, which requires that the surety or sureties must be among those appearing on the current U.S. Treasury Department Circular 570 (published in the FEDERAL REGISTER), and any amendments thereto, and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570. The bond is to be completed in accordance with the instructions on the reverse side of Standard Form 25.

(b) The penal sum of such performance bond shall be 100 percent of the contract price. The bond must not be dated prior to the date of the contract and shall be furnished by the Contractor to the Contracting Officer not later than 30 calendar days after the date of receipt by the Contractor of notice of award of the contract. As used in Standard Form 25, the term "Government" shall mean the "Panama Canal Commission".

(c) Under the terms of Standard Form 25 and this contract, the penal obligation specified in paragraph (b) of this clause shall be in

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effect during the life of the contract and during all warranty periods stipulated in the contract.

(End of clause)

**3552.228-77 Performance and Payment Bonds.**

As prescribed in 3528.103-70 (a) and (b), insert the following clause:

PERFORMANCE AND PAYMENT BONDS (JAN 1990)

(a) *General.* (1) The bonds required by paragraphs (b) and (c) of this clause are to be completed in accordance with the instructions on the reverse side of the respective bond forms. Corporations executing the bonds as sureties must be among those appearing on the current U.S. Treasury Department Circular 570 (published in the FEDERAL REGISTER), and any amendments thereto, and must be acting within the limitations set forth therein. If the contract work is to be performed in Panama, corporations that appear on the Panama Canal Commission's list of locally acceptable sureties, and that act within the limitations set forth therein, may be used in lieu of those appearing on Circular 570.

(2) The bonds must not be dated prior to the date of the contract and shall be furnished by the Contractor to the Contracting Officer not later than 30 calendar days after the date of receipt by the Contractor of notice of award of the contract.

(b) *Performance Bond.* The Contractor shall furnish a performance bond on Standard Form 25 in connection with the performance of the work under this contract. The penal sum of such bond shall be 100 percent of the contract price.

(c) *Payment Bond.* The Contractor shall furnish a payment bond on Standard Form 1416 for the protection of persons furnishing material and/or labor in the prosecution of the contract. The penal sum of such bond shall be as follows: (1) 50 percent of the contract price if such price is not more than \$1,000,000; (2) 40 percent of the contract price if such price is more than \$1,000,000 but not more than \$5,000,000; or (3) \$2,500,000 if the contract price is more than \$5,000,000.

(End of clause)

**3552.231-70 Travel Costs.**

As prescribed in 3531.205-46(b), insert the following clause:

TRAVEL COSTS (JAN 1990)

Costs incurred by the Contractor for travel and per diem in the performance of this contract that are authorized elsewhere in this contract shall be reimbursed to the Contractor in accordance with the Federal Travel Regulations, prescribed by the General Serv-

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ices Administration, in effect on the dates of performance of this contract.

(End of clause)

**3552.232-70 Contract Payments.**

As prescribed in 3532.111(a)7, insert the following clause:

CONTRACT PAYMENTS (JAN 1990)

(a) Contract payments, unless otherwise specified, will be made in United States currency, by check drawn on a local branch of a United States bank.

(b) When the Contracting Officer determines that the value of materials delivered to the work site may be taken into account in preparing the progress payment estimate, the Contractor shall:

(1) Compile the initial inventory list which shall be complete as regards to descriptions, quantities, nomenclatures, and prices, and shall be fully supported by certified invoices or other documentary evidence acceptable to the Contracting Officer. The list must be revised each month to show additions to the inventory, if any (supported by additional invoices), and deletions of material used during the month.

(2) Submit monthly, subsequent lists for the material previously covered by certified invoices showing the exact status of remaining material based on a physical inventory.

(3) Furnish inventory lists in duplicate at least five days prior to the date for submission of progress estimate for monthly payment.

(c) In approving payments for material inventories, the Contracting Officer will authorize payment of 75 percent of the cost of material as part of the monthly payments, provided, however, that:

(1) Any line item with a total value of less than \$100 will be deleted; and

(2) The total value of the inventory, exclusive of deleted line items, exceeds \$1,000.

(End of clause)

**3552.232-71 Availability of Funds.**

As prescribed in 3532.705-1, insert the following clause:

AVAILABILITY OF FUNDS (JAN 1990)

The authorization of performance of work under this contract during the initial contract period and any extension period(s) is contingent upon the availability of funds to procure this service. If the contract is awarded or extended, the Panama Canal Commission's obligation beyond the end of the fiscal year (September 30) in which the award or extension is made is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Panama Canal

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Commission for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for performance and written notice of such availability is given to the Contractor.

(End of clause)

**3552.232-72 Presentation of Statement of Release From Claims.**

As prescribed in 3532.806(a), insert the following clause:

**PRESENTATION OF STATEMENT OF RELEASE FROM CLAIMS (JAN 1990)**

As a condition for final payment, the Contractor shall present a release of all claims against the Government arising by virtue of this contract. The release shall be applicable to all claims except those that the Contractor has specifically excepted in stated amounts from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15). The release is due within 14 days of final acceptance.

(End of clause)

**3552.232-73 Invoices.**

As prescribed in 3532.111(a)(8), insert a clause substantially as follows:

**INVOICES (JAN 1990)**

(a) Invoices shall be submitted in an original and two copies to the office designated elsewhere in this contract.

(b) To constitute a proper invoice for supply or service (other than architect-engineer service) contracts, the invoice must include the items listed in paragraph (a)(4), subdivisions (i) through (viii) of clause 52.232-25, Prompt Payment. The invoice must be accompanied by a copy of the packing list, showing weights and measurements (gross and net) and contents of each package, if applicable. If items are mailed, the insurance parcel post receipt or copy thereof must accompany the invoice.

(c) To constitute a proper invoice for construction contracts, the invoice must include the items listed in paragraph (a)(2), subdivisions (i) through (ix) of clause 52.232-27, Prompt Payment for Construction Contracts.

(d) To constitute a proper invoice for architect-engineer services, the invoice must include the items listed in paragraph (a)(3), subdivisions (i) through (viii) of clause 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.

(e) If this contract requires a written release from the Contractor with respect to

claims, the release must accompany the invoice.

(End of clause)

**3552.236-70 Mailing of Correspondence and Bids.**

As prescribed in 3536.371(a)(6), insert the following provision:

**MAILING OF CORRESPONDENCE AND BIDS (JAN 1990)**

(a) Prospective bidders may submit inquiries concerning the specifications by writing the following:

(For local bidders)  
Specifications and Estimates Branch  
Engineering Division  
Engineering and Construction Bureau  
Balboa, Republic of Panama

(For other bidders)  
Specifications and Estimates Branch  
Engineering Division  
Engineering and Construction Bureau  
APO Miami 34011-5000

(b) Bids to be mailed shall be addressed as follows:

(For local bidders)  
Contracting Officer  
Engineering and Construction Bureau  
Panama Canal Commission  
Balboa, Republic of Panama

(For other bidders)  
Contracting Officer  
Engineering and Construction Bureau  
Panama Canal Commission  
APO Miami 34011-5000

(End of provision)

**3552.236-71 Additive Items.**

As prescribed in 3536.371(a)(7), insert the following provision:

**ADDITIVE ITEMS (JAN 1990)**

(a) The low bidder for purposes of award shall be the conforming responsive bidder offering the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded in the numerical order of priority listed in the schedule within the funds determined by the Contracting Officer to be available on the date of bid opening.

(b) For example, when the amount of available funds is \$100,000, and a bidder's base bid and bid for successive additives are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000, respectively, the total amount of this bid for purposes of award would be \$95,000 for the base bid plus the first additive, with the second, third and fourth additives being omitted because the second additive (\$8,000) would cause the total bid to exceed \$100,000. If, for more than one

bidder, the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded are equal, then the low bidder for purposes of award shall be the one submitting the lowest price for the base bid item.

(c) After the low bidder has been determined, the Contracting Officer shall be free to award the contract for the base bid item and any quantity of the additive bid items, but only in the numerical order of priority listed in the schedule, and provided that the total price is within the amount of funds available on the date of award and that the award does not exceed the price offered by any other conforming responsive bidder for the same bid items.

(d) The Contracting Officer may reject a bid as nonresponsive if it is materially unbalanced as to prices for any of the different bid items. A bid is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

*Alternate I (Jan 1990)*

If the additives may be awarded with the base bid item in any combination, substitute the following text in place of the basic text:

(a) The low bidder for purposes of award shall be the conforming responsive bidder offering the lowest total price for the base bid item plus, in the numerical order of priority listed in the schedule, the largest number of additive bid items that can be awarded within the funds determined by the Contracting Officer to be available on the date of bid opening.

(b) If, for all bidders, inclusion of the next additive bid item in the listed order of priority would make the award exceed such available funds, it shall be omitted and the next subsequent additive bid item or items shall be included if the prices on one or more bids allow award thereon within the funds available. For example, when the amount of available funds is \$100,000, and a bidder's base bid and bid for successive additives are \$85,000, \$10,000, \$8,000, \$6,000, and \$4,000, respectively, the total amount of this bid item for purposes of award would be \$99,000 for the base bid plus the first (\$10,000) and fourth (\$4,000) additives. All bids shall be evaluated and the low bidder determined on the basis of the same additive bid items, as above provided. If, for more than one bidder, the lowest total price for the base bid item plus the largest number of additive bid items that can be awarded are equal, then the low bidder for purposes of award shall be the one submitting the lowest price for the base bid item.

(c) After the low bidder has been determined, the Contracting Officer shall be free to award the contract for the base bid item and any quantity and combination of the ad-

ditive bid items regardless of their numerical order of priority listed in the schedule, provided that the total price is within the amount of funds available on the date of award and that the award does not exceed the price offered by any other conforming responsive bidder for the same bid items.

(d) The Contracting Officer may reject a bid as nonresponsive if it is materially unbalanced as to prices for any of the different bid items. A bid is unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

**3552.236-72 Cost Limitation.**

As prescribed in 3536.371(a)(9), insert the following provision:

COST LIMITATION (JAN 1990)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered non-responsive. By signing its bid, the bidder certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (1) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (2) exceed the cost limitations unless such limitations have been waived by the Commission's Procurement Executive prior to award.

(End of provision)

**3552.236-73 Scope of Work.**

As prescribed in 3536.570(k), insert the following clause:

SCOPE OF WORK (JAN 1990)

The Contractor shall furnish all plant, materials, equipment, supplies, labor and transportation, including, fuel, power, water (except any materials, equipment, utility or service, if any, specified herein to be furnished by the Commission), as required to accomplish all work under the contract, in strict accordance with the specifications, schedules, and drawings, all of which are made a part hereof, and including such detail drawings as may be furnished by the Contracting Officer from time to time during the prosecution of the work in explanation of said drawings.

(End of clause)

**3552.236-74 Work Sites, Yards, Shops, and Offices.**

As prescribed in 3536.570(l), insert the following clause:

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### WORK SITES, YARDS, SHOWS, AND OFFICES (JAN 1990)

(a) The term "work site" will embrace all areas wherein operations are conducted by the Contractor in connection with the contract, including Commission work areas, plant, shops, yards, offices, camps and other facilities. The Contractor may be permitted to use areas within the Canal Operating Area for storage-of-work purposes on a temporary basis.

(b) Prior to commencement of work, the Contractor shall, upon request, submit for the approval of the Contracting Officer, prints in quadruplicate, showing the locations of its major plant, offices, buildings, shops, storage yards, and other construction appurtenances which it proposes to construct. The Contractor shall remove any structure which it may construct in Canal Operating Areas, and restore the work site to its original condition after completion of the work.

(c) If, at any time during the progress of the work, areas which have been allocated to the Contractor are not being used by the Contractor or are not essential to the future execution of the work, as determined by the Contracting Officer, the Contractor shall, when so directed, promptly clean up and vacate such areas at no expense to the Commission. The Contractor shall keep the buildings and grounds in use by the contractor at the work site in an orderly and sanitary condition, subject to the approval of the Contracting Officer.

(d) Only equipment and materials required or used in connection with the work under the contract may be stored in Canal Operating Areas. Upon completion of the contract, and before final payment is made, the Contractor shall remove all equipment and materials from such areas.

(End of clause)

### **3552.236-75 Work Time Limitations.**

As prescribed in 3536.570(m), insert the following clause:

#### WORK TIME LIMITATIONS (JAN 1990)

No work shall be done on Sundays or on days treated as a holiday for employees of United States Government agencies in the Republic of Panama, unless authorized or directed by the Contracting Officer. Requests by the Contractor to work on such days must be made in writing at least three days in advance.

(End of clause)

### **3552.236-76 Accident Prevention.**

As prescribed in 3536.570(n), insert the following clause:

#### ACCIDENT PREVENTION (JAN 1990)

(a) In performing this contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies and equipment; and avoiding work interruptions. For these purposes, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for this purpose are taken.

(b) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contracting Officer.

(c) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(d) The Contractor shall call to the attention of the Contracting Officer or his representative any unsafe condition which is not within the power of the Contractor to correct but which could be corrected by others.

(e) The Contractor shall, when performing work of an electrical nature, or when working in close proximity to electrical equipment or circuits, observe the following:

(1) Be responsible for determining that the facility on which his men are to work is de-energized, isolated, and identified with accepted tag out/lock out procedures. The Commission will de-energize or isolate the cable, conductor, bus, circuit breaker, or line on which the Contractor desires to work. The Commission will also re-energize the cable, conductor, bus, circuit breaker, or line upon which the Contractor has completed work and which he certifies is ready for service.

(2) When performing work, such as painting, roofing or modifying buildings, in close

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proximity to electric wires, work shall be scheduled in such a manner that these wires shall be de-energized during the period men are working around them. Arrangements shall be made with the Contracting Officer's representative for de-energizing such service wires and, unless otherwise specified, work requests shall be furnished by the Contractor to the Commission's Electrical Division to cover such work.

(3) Painting, alterations, and additions to Commission facilities frequently require work to be performed in close proximity to electrical equipment and circuits within buildings. When such work, in the opinion of the Contracting Officer, requires the de-energization of circuits, arrangement for de-energizing services will be made by the Contracting Officer with the agency involved.

(4) De-energization of circuits required in paragraphs (e)(2) and (3) of this clause shall be scheduled in such a manner that prolonged service interruptions shall be avoided.

(f) In addition to the above, the Contractor shall:

(1) Submit, within 30 calendar days after date of award, a written outline of his proposed safety program for the contract. The safety program shall include frequent and appropriate safety training sessions for employees as a regular and integral part of the contract activities.

(2) Submit for approval a list of the personal protective equipment, by type and manufacturer, to be used by employees in hazardous occupations.

(3) Confer with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the overall safety program.

(g) The Contractor shall be responsible for its subcontractors' compliance with this clause.

(End of clause)

[55 FR 7664, Mar. 2, 1990; 55 FR 38331, Sept. 18, 1990]

**3552.236-77 Working in Confined Spaces.**

As prescribed in 3536.570(o), insert the following clause:

WORKING IN CONFINED SPACES (JAN 1990)

The Contractor shall comply with the Commission's policy regarding work to be performed in confined or enclosed spaces. This policy is set forth in a pamphlet entitled "Panama Canal Commission Confined Spaces Policy", which will be made available to the Contractor, or a prospective contractor, upon request to the Contracting Officer or his representative.

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(End of clause)

**3552.236-78 Safety Sign.**

As prescribed in 3536.570(p), insert the following clause:

SAFETY SIGN (JAN 1990)

The Contractor shall construct a safety sign at the work site at a location directed by the Contracting Officer. The sign shall be 6 feet by 4 feet in size and shall conform to the requirements of the sketch attached at the end of these General Conditions. The sign shall be erected as soon as possible, but not later than 10 days after work is initiated at the work site. No separate payment will be made for erecting and maintaining the safety sign.

(End of clause)

**3552.236-79 Protection of Material and Work.**

As prescribed in 3536.570(q), insert the following clause:

PROTECTION OF MATERIAL AND WORK (JAN 1990)

The Contractor shall protect and preserve all material, supplies and equipment of every description (including property which may be furnished or owned by the Commission) and all work performed. All reasonable requests of the Contracting Officer to enclose or specially protect such property shall be complied with. If, as determined by the Contracting Officer, material, equipment, supplies, and work performed are not adequately protected by the Contractor, such property may be protected by the Commission, and the cost thereof may be charged to the Contractor or deducted from any payments due the Contractor.

(End of clause)

**3552.236-80 Toilet Facilities.**

As prescribed in 3536.570(r), insert the following clause:

TOILET FACILITIES (JAN 1990)

Unless otherwise noted, the Contractor shall provide and maintain adequate toilet facilities at the work site for the use of all personnel engaged in the work under the contract. The number, types and locations of such toilet facilities shall be approved by the Contracting Officer. These facilities, where connection to the sanitary sewer system is possible, will be connected and disconnected to the sewer system by the Commission at the expense of the Contractor. The toilet facilities shall be maintained by the Contractor in a clean and sanitary condition. Upon

completion of the work, all toilet facilities shall be removed by the Contractor.

(End of clause)

**3552.236-81 Drinking Water.**

As prescribed in 3536.570(s), insert the following clause:

DRINKING WATER (JAN 1990)

Unless otherwise noted, the Contractor shall provide suitable drinking water and sanitary dispensing facilities for the Contractor's employees.

(End of clause)

**3552.236-82 Contract Bid Breakdown.**

As prescribed in 3536.570(t), insert the following clause:

CONTRACT BID BREAKDOWN (JAN 1990)

The Contractor shall, within 10 days after receipt of the Notice to Proceed, or on receipt of request, submit for approval a breakdown of its bid in a form to be outlined by the Contracting Officer. Supplementary bid breakdowns of all or part of the bid shall be furnished if requested by the Contracting Officer. Payments to the Contractor shall be based upon the information presented in the approved bid breakdown.

(End of clause)

**3552.236-83 Descriptive Data and Correspondence.**

As prescribed in 3536.570(u), insert the following clause:

DESCRIPTIVE DATA AND CORRESPONDENCE  
(JAN 1990)

(a) All catalogs, operating instructions, descriptive literature, references, specifications, drawings and notes relevant to the equipment furnished under the specifications, and correspondence shall be in the English language. All drawings shall be prepared in accordance with American Standard Drafting Room Practice as approved by the American National Standard Institute (ANSI) standards and in accordance with the following:

(1) All dimensions shall be given in feet and inches.

(2) All weights shall be avoirdupois scales.

(3) All volume measurements shall be in cubic feet, cubic inches or U.S. gallons (231 cu. in./gal).

(4) All heat quantities shall be in British thermal units (Btu's).

(5) All instruments shall read in units of the English system, except gallons shall be U.S. gallons as noted in paragraph (a)(3) of this clause.

(b) When required by the various sections of these specifications or when requested by the Contracting Officer, seven (7) copies (unless otherwise specified) of the following items shall be submitted by the Contractor to the Contracting Officer for approval.

(1) *Material Lists:* Before any materials, fixtures or equipment are purchased, the Contractor shall submit a complete list of materials, fixtures and equipment to be incorporated in the work, together with the names and addresses of the manufacturers and their catalog numbers and trade names. A separate complete list shall be furnished for the equipment called for under each section of the specifications. No consideration will be given to partial lists submitted from time to time.

(2) *Descriptive Data:* In order to establish quality or suitability of materials, fixtures and equipment, the Contractor shall furnish detailed information and descriptive data for the various items. Approval of items will be based on manufacturer's published ratings. Any items which are not in accordance with the specifications will be rejected. The product of any reputable manufacturer regularly engaged in the commercial production of specified equipment will not be excluded on the basis of minor differences, provided all essential requirements of this specification relative to materials, capacity, and performance are met.

(3) *Samples:* (i) The Contractor shall submit all samples within a reasonable time before use to permit inspection and testing. Samples of materials subject to laboratory tests require, generally, a minimum of 20 days for tests after receipt of sample by the Contracting Officer. However, considerably more time may be required depending on the nature of the tests and the ability of the laboratory to take care of current testing requirements.

(ii) Samples of the sizes and numbers required by the Contracting Officer or specified in the contract shall be submitted (except when this requirement is waived by the Contracting Officer) with label on each, giving contract number, specification paragraph, name and materials, trade name, name of manufacturer, place of origin, name and location of building on which to be used, and name of Contractor submitting same.

(iii) Samples shall be so packed as to ensure delivery at destination in good condition and with all transportation charges prepaid by sender.

(iv) Samples of materials not subject to destructive tests, when approved, will be kept on file in the office of the Contracting Officer until the completion of the work, except samples of hardware or other items approved by the Contracting Officer, which may be suitably marked for identification and installed in the work. If the Contractor desires an approved sample for the Contractor's own file or for a manufacturer, the Contractor

shall submit sufficient additional samples to permit the desired distribution. Samples approved or rejected will be returned to the Contractor only at the Contractor's request and expense.

(v) Samples selected will be tested in accordance with the requirements of the applicable material specifications. If a sample fails to meet specification requirements, the cost of testing shall be at the expense of the Contractor. Failure of samples to pass specified requirements will be sufficient cause for refusal to consider for this work any further samples from the manufacturer whose materials have failed to pass the required tests.

(c) *Submittals*: Each submittal shall be accompanied by the required number of Panama Canal Form 3062, Submittal Data For Approval, fully executed and certified by the Contractor. When possible, a single transmittal shall be used for all work of a section of the specifications, but in no instance shall a transmittal include work of more than one section. Each copy of each item submitted for approval shall also be properly identified as to the subject matter indicated thereon, the item of equipment or material to which it pertains, and the contract number under which it is submitted. Each point of difference between the proposed equipment or material and the specified equipment or material shall be clearly indicated on the submittal. The submittals shall be complete and shall be checked by both the materials or equipment supplier and the Contractor, and shall contain all required and necessary detailed information. Fabrication of the equipment and construction where involved shall not start until the submittals have been approved.

(d) If approved by the Contracting Officer, each copy of the submittal will be identified as having received such approval by being stamped either "Approved" or "Approved as Noted", and one set will be returned to the Contractor. Such approved submittals need not be resubmitted. If, however, the set returned to the Contractor is stamped "Disapproved", such submittal shall be resubmitted as expeditiously as possible. If the Contractor desires to have more than one copy returned for the Contractor's use, the Contractor must increase the number of copies submitted accordingly and must so indicate on the transmittal form.

(e) The approval of submittals by the Contracting Officer shall not be construed as a complete check, but will indicate only that, in general, the materials, equipment, system, arrangement, detailing and method of construction are satisfactory. Approval will not relieve the Contractor of the responsibility for any error or omission which may exist, and the Contractor shall be responsible for the dimensions and design of adequate connections, details, satisfactory construction, installation and operation of all work

in accordance with the contract provisions. Approval shall be subject to final, in-place inspection of the work.

(End of clause)

#### **3552.236-84 Instruction Books.**

As prescribed in 3536.570(u), insert the following clause:

##### INSTRUCTION BOOKS (JAN 1990)

The Contractor shall deliver to the Contracting Officer nine (9) copies (unless otherwise specified) of all instruction books as called for under the various sections of the Technical Conditions. The instruction books shall be submitted and approved before work can be started on installation of the equipment to which they pertain. Each copy of the instruction books shall provide legible, complete and clear instructions, descriptions and data for installation, operation, maintenance and repair of the equipment as well as replacement parts lists. Each copy of an instruction book shall be bound in separate durable covers. Method of binding shall be post type or equivalent to permit insertion of replacement pages. Ring or spiral type loose leaf binders are not acceptable. Each copy shall be properly and indelibly identified with the name of the project, the contract number, and the name and location of the equipment to which it pertains.

(End of clause)

#### **3552.236-85 Record Drawings.**

As prescribed in 3536.570(u), insert the following clause:

##### RECORD DRAWINGS (JAN 1990)

The Contractor shall, during the progress of the work, keep a careful and current record, on a separate set of contract drawings, of all changes and corrections from the layouts shown on the drawings. These drawings shall be available for inspection at all times at the work site indicated by the drawings. If the Contracting Officer determines that the record drawings are seriously out of date, the Contracting Officer may require the Contractor to cease physical work on the portion of the work covered by the drawings until the drawings are brought up to date. Any costs of delays resulting from such actions by the Contracting Officer shall be borne by the Contractor. Upon completion, the Contractor shall revise one set of prints of contract drawings, furnished by the Contracting Officer, showing the work as actually constructed. These drawings shall be delivered to the Contracting Officer within 14 calendar days after receipt of the "Acceptance of Work" letter. All revisions made to the contract drawings shall be shown so that

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they stand out against the unchanged items in the drawing.

cluding termination for default and the withholding of final payment.

(End of clause)

(End of clause)

**3552.236-86 Restricted Areas.**

**3552.243-70 Modification Proposals—Price Breakdown.**

As prescribed in 3536.570(v), insert the following clause:

As prescribed in 3543.205 insert the following clause:

RESTRICTED AREAS (JAN 1990)

MODIFICATION PROPOSALS—PRICE BREAKDOWN (JAN 1990)

(a) If any of the work is located within a restricted area (such as locks areas, power stations, water purification plants, pump stations, and industrial areas), installation clearances, at no cost to the Contractor, will be required for all employees who must work in the restricted area. The Contractor shall submit to the Contracting Officer a listing of all employees to be cleared. The listing should be submitted at least 15 days before the anticipated starting date and should include the full name and cedula or identification card number of each employee and must be in alphabetical order.

The Contractor shall furnish an itemized price breakdown, as required by the Contracting Officer, with the Contractor's proposal in connection with a contract modification. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs as well as profit, and shall cover all work involved to accomplish the modification, whether deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by such date as may be specified by the Contracting Officer.

(b) Employees of the Contractor must carry their cedulas or identification cards at all times and produce them upon request of authorized personnel. The Contractor shall ensure that the Contractor's employees remain in the immediate area of work and do not wander indiscriminately about the restricted areas.

(End of clause)

(End of clause)

**3552.236-87 Surplus Space.**

**3552.244-70 Subcontractors.**

As prescribed in 3536.570(y), insert the following clause:

As prescribed in 3536.570(x), insert the following clause:

SURPLUS SPACE (JAN 1990)

SUBCONTRACTORS (JAN 1990)

Surplus space in Commission buildings, facilities, or land areas may be rented by Commission contractors, or by subcontractors through and in the name of a Commission contractor, for use in support of contract performance upon a written request by the Contractor to the Contracting Officer. The request shall include specific information regarding the location desired, the number of square feet required, and the type of activities to be conducted. If the request is accepted, the space assignment will be administered under the terms of a "Letter of Authorization" (LOA). Failure by the Contractor to comply with any of the terms of the LOA, or to completely remove itself from the rented space after the Contracting Officer has advised the Contractor that the LOA is terminated, shall be construed as a violation of this contract clause and shall entitle the Contracting Officer to take whatever action is appropriate under the contract, in-

If subcontracts have been awarded for work under this contract, the Contractor shall submit to the Contracting Officer, within 30 calendar days after the date of award, a statement on the Commission's standard "Subcontractors" form setting forth the name and address of the subcontractor, a summary description of the work subcontracted and a description of subcontractor's previous experience in related work. If, at any time, the Contracting Officer determines that any subcontractor's performance is unsatisfactory, the Contracting Officer will notify the contractor accordingly, and steps will be taken immediately for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this contract shall create any contractual relation between the subcontractor and the Commission. Subcontractors and their employees shall be considered to be employees of the Contractor.

3552.247-70

(End of clause)

**3552.247-70 Evaluation of Delivery Terms in Contract Awards.**

As prescribed in 3547.370, insert the following provision:

EVALUATION OF DELIVERY TERMS IN CONTRACT AWARDS (JAN 1990)

(a) When competing offers are received which specify the two different allowable terms of delivery, the offers will be evaluated at the actual or constructive landed cost in the Republic of Panama in accordance with the procedures stated below. In this connection, and for evaluation purposes only, the point of delivery will be the Port of Balboa, Panama or the Port of Cristobal, Panama for all offerors. Therefore, offerors quoting on an f.o.b. destination New Orleans basis shall furnish the total cubic measurement for each item being offered in order to apply the following procedures:

(1) *F.o.b. Destination New Orleans:* Offers quoting delivery in the United States are required on an f.o.b. destination New Orleans, Louisiana basis since transportation from New Orleans will be by a vessel, operating pursuant to a U.S. Government contract, which will discharge at the Port of Balboa. In order to compare these offers with offers quoting c.i.f. destination Panama, the following factors will be applied:

(i) Ocean freight, New Orleans to Balboa \$\_\_\_\_\_ (*Contracting Officer insert appropriate amount*) per measurement ton of 40 cubic feet (MTON). This rate includes stevedoring and handling fees.

(ii) A self-insured loss factor of one percent of the dollar value of the offer price.

(iii) If the delivery port specified in the Commission solicitation is Cristobal, transportation from Balboa to Cristobal will be calculated at the rate of \$\_\_\_\_\_ (*Contracting Officer insert appropriate amount*) per MTON.

(2) *C.i.f. Destination Panama:* Foreign offerors proposing to ship from foreign countries, U.S. offerors preferring to ship directly to Panama, and Panamanian offerors proposing to ship from stock within the Republic of Panama, are required to ship on a c.i.f. Balboa, Panama or Cristobal, Panama basis, as applicable.

(b) Failure to furnish the total cubic measurements of the individual items could result in the rejection of the offer. Moreover, if actual total cubic measurements vary from the information furnished and the award was made to the Contractor on the constructive cost based on the erroneous information, the Contractor will be charged for the difference between the actual cost and the price of the next low responsive offeror.

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(End of provision)

**PART 3553—FORMS**

Sec.

3553.000 Scope of part.

**Subpart 3553.1—General**

3553.107 Obtaining forms.

**Subpart 3553.2—Prescription of Forms**

3553.200 Scope of subpart.

3553.213 Small purchase and other simplified purchase procedures (Forms 1010, 1820, 1821, 1822, 2008, 3083, 3163, 3163-MTD, 7071, 7074).

3553.215 Contracting by negotiation (Form 6122).

3553.236 Construction and architect-engineer contracts (Form 3062).

**Subpart 3553.3—Illustration of Forms**

3553.300 Scope of subpart.

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

SOURCE: 55 FR 7673, Mar. 2, 1990, unless otherwise noted.

**3553.000 Scope of part.**

This part prescribes Panama Canal Commission forms to be used in various acquisitions and other information pertaining to the forms.

**Subpart 3553.1—General**

**3553.107 Obtaining forms.**

Commission forms may be obtained from the cognizant Commission contracting office or by written request as indicated below:

(a) For all forms prescribed at 3553.213, write to: Panama Canal Commission, Logistical Support Division, APO Miami 34011-5000;

(b) For the forms prescribed at 3553.215 and 3553.236, write to: Panama Canal Commission, Construction Division, APO Miami 34011-5000.

**Subpart 3553.2—Prescription of Forms**

**3553.200 Scope of subpart.**

This subpart prescribes Commission forms for use in the acquisition of supplies and services, including construction. The subpart is arranged by subject matter in the same order as, and is

keyed to, the parts of the PAR in which the form usage requirements are addressed.

**3553.213 Small purchase and other simplified purchase procedures (Forms 1010, 1820, 1821, 1822, 2008, 3083, 3163, 3163-MTD, 7071, 7074).**

The following forms are prescribed as stated below for use in small purchases, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) *Panama Canal Form No. 1010, Purchase Order.* This form may be used by the Inventory Management Branch in lieu of Optional Forms 347 and 348 for the purposes specified in 3513.505-2(a).

(b) *Panama Canal Form No. 1820, Purchase Order.* This form may be used by the Purchasing and Contract Branch in lieu of Optional Form 347 for the purposes specified in 3513.505-2(b).

(c) *Panama Canal Form No. 1821, Purchase Requisition.* This is a 6-sheet snap-out form. The first, fifth, and sixth sheets are entitled "Purchase Requisition" (the second, third and fourth sheets are explained in following paragraph (d)). The purchase requisition is an internal document that is prescribed for use only by Commission activities to request purchasing action by the Purchasing and Contracts Branch (see 3513.505-70).

(d) *Panama Canal Form No. 1821, Request for Quotation.* This is a 6-sheet snap-out form. The second, third and fourth sheets are entitled "Request for Quotation" (the first, fifth, and sixth sheets are explained in paragraph (c) of this section). As specified at 3513.107(a)(4)(i), this form may be used by the Purchasing and Contracts Branch in lieu of Standard Form 18 for the solicitation of nonstock items and services.

(e) *Panama Canal Form No. 1822, Request For Quotation Continuation.* As specified at 3513.107(a)(4)(ii), this form may be used with Panama Canal Form No. 1821 when additional space is needed.

(f) *Panama Canal Form No. 2008, This Is A Request For Prices; It Is Not An Order.* As specified at 3513.107(a)(4)(iii), this form may be used by the Inventory Management Branch in lieu of Stand-

ard Form 18 for the solicitation of standard stock items.

(g) *Panama Canal Form No. 3083, Purchase Order Continuation.* As specified at 3513.505-2(c), this form may be used with Panama Canal Form No. 1820, in lieu of Optional Form 348, when additional space is needed.

(h) *Panama Canal Form No. 3163, Division Purchase Order.* As specified at 3513.505-2(d), this form may be used by all activities having contracting authority in lieu of Optional Form 347 for the decentralized procurement of supplies and services.

(i) *Panama Canal Form No. 3163-MTD, Division Purchase Order.* As specified at 3513.505-2(e), this form may be used by the Motor Transportation Division and the New Orleans Branch, Logistical Support Division in lieu of Optional Form 347 for purchases of nonstandard stock automotive repair parts that do not exceed dollar amounts established by the General Services Director.

(j) *Panama Canal Commission Form 7071, General Contract Clauses and Provisions, Small Purchases.* As specified at 3513.107(a)(4)(iv), this form shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

(k) *Panama Canal Commission Form 7074, Information Sheet.* As specified at 3513.107(a)(4)(iv), this form shall be forwarded to prospective suppliers together with either Panama Canal Form No. 1821 or Panama Canal Form No. 2008, as applicable.

**3553.215 Contracting by negotiation (Form 6122).**

As specified at 3515.804-6, *Panama Canal Form No. 6122, Cost Breakdown*, may be used by the contracting officer to require contractors to submit information for cost or price analysis in connection with requests for proposals or modifications not exceeding \$25,000.

**3553.236 Construction and architect-engineer contracts (Form 3062).**

As specified at 3536.571, *Panama Canal Form 3062, Submittal Data For Approval*, shall be used by contractors as a transmittal document when data is to be submitted for the contracting officer's approval pursuant to FAR clause

3553.300

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52.236-5 or clause 3552.236-83 of this regulation.

**Subpart 3553.3—Illustration of  
Forms**

**3553.300 Scope of subpart.**

PAR forms are not illustrated in the PAR. Persons wishing to obtain copies of Commission forms prescribed in the PAR may do so in accordance with 3553.107.

## SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

### PART 3570—ACQUISITION OF PANAMANIAN SUPPLIES AND SERVICES

Sec.

3570.000 Scope of part.

#### Subpart 3570.1—Panamanian Preference

3570.101 Determination and definitions.

3570.102 Policy.

AUTHORITY: 40 U.S.C. 486(c); Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

SOURCE: 55 FR 7674, Mar. 2, 1990, unless otherwise noted.

#### **3570.000 Scope of part.**

This part provides guidance on implementation of Article IX of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 as it relates to the preferential acquisition of supplies and services obtainable in the Republic of Panama. (The pertinent Article IX language is set forth at 3525.801-74.)

#### Subpart 3570.1—Panamanian Preference

##### **3570.101 Determination and definitions.**

(a) It has been determined by the Administrator of the Panama Canal Commission that the acquisition of supplies and services obtainable in the Republic of Panama is required under the conditions contemplated by Article IX.

(b) For the purposes of this determination, the following words and terms, as used in Article IX and this part 3570, shall have the meanings stated below:

*Comparable in quality and price* means the supplies or services (1) must conform to the purchase description, specifications, or statement of work that sets forth the Commission's requirements; and (2) can be acquired at a price equal to or lower than the price for similarly conforming supplies or services obtainable from sources outside the Republic of Panama.

*Goods* means manufactured or unmanufactured articles, materials and supplies.

*Obtainable in the Republic of Panama* means the supplies or services can be obtained from sources in the Republic of Panama.

*Panamanian origin* means goods that are grown, mined, or produced in the Republic of Panama; or in the case of goods which consist in whole or in part of materials from another country, have been substantially transformed by processes performed in the Republic of Panama into new and different articles of commerce with a name, character, or use distinct from that of the article or articles from which they were so transformed.

*Supplies*, pursuant to the definition in FAR 2.101, means "all property except land or interest in land." Accordingly, the term includes construction.

##### **3570.102 Policy.**

(a) When supplies or services can be obtained from sources both within and without the Republic of Panama, and the following conditions exist, preference shall be afforded to those sources within Panama to the maximum extent possible:

(1) The supplies or services can be provided at the time they are required;

(2) The supplies or services are comparable in quality and price to those that can be obtained from sources outside Panama; and

(3) The sources in Panama:

(i) Are determined to be responsible prospective contractors pursuant to FAR subpart 9.1, and

(ii) Can comply in all material respects with the terms and conditions of the acquisition document.

(b) In the comparison of prices with respect to subparagraph (a)(2) of this section, there shall be taken into account the cost of transport to the Republic of Panama, including freight, insurance, and handling. The cost of insurance shall be calculated at one percent (1%) of the value of the supplies, or any supplies incidental to services, in the event the contract does not require insurance.

(c) When choosing between goods from sources within Panama that are otherwise equal, preference shall be given to those goods having a larger percentage of components of Panamanian origin.

(d) When conducting an acquisition of supplies or services for which the estimated cost is not expected to exceed the small purchase limitation in FAR part 13, participation may be limited to sources in Panama unless the contracting officer determines that there is no reasonable expectation of obtaining quotations from two or more such sources that:

(1) Will be responsive to the required delivery time, and

(2) Will be comparable in quality and price to supplies or services from sources outside Panama.

(e)(1) In order to conduct an acquisition of supplies or services above the small purchase limitation and limit participation in the acquisition to

sources in Panama, the contracting officer shall:

(i) Prepare and submit a class or an individual determination and findings to the Procurement Executive, and

(ii) Obtain that official's written approval of such determination and findings.

(2) The determination and findings must clearly document that:

(i) An acquisition limited to such sources would result in obtaining supplies or services at the time they are required that would be comparable in quality and price to those obtainable from sources outside Panama, or

(ii) An acquisition from sources outside Panama would be impracticable because of the nature of the acquisition (e.g., a requirements type contract where deliveries must be made within a very short time span by trucks or pipeline from stockpiles or storage facilities located in Panama).

# CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY

(Parts 4400 to 4499)

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