

(23) 552.270-38 Integrated Agreement.

(24) 552.270-39 Mutuality of Obligation

(25) 552.270-40 Asbestos and Hazardous Waste Management.

(26) 552.270-41 Acceptance of Space.

(b) The contracting officer shall insert the clause at 552.270-22, Liquidated Damages, in solicitations and contracts for leasehold interests in real property when there is a critical requirement that the delivery date be met and an actual cost cannot be established for the loss to the Government resulting from late delivery.

570.704 Use of provisions and clauses.

The omission of any provision or clause when its prescription requires its use constitutes a deviation which must be approved under subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g., (GSAR) 48 CFR 552.203-5, Covenant Against Contingent Fees, FAR 52.215-1, Examination of Records by the Comptroller General, etc.) in order to modify the language of the provision or clause, when permitted by the statute. However, the statutory provisions and clauses may not be omitted from the SFO unless the statute provides for waiving the requirements of the provision or clause.

Subpart 570.8—Forms Used for Contracting for Leasehold Interests in Real Property

570.801 Standard forms.

Standard Form 2, U.S. Government Lease for Real Property, should be used to award leases unless GSA Form 3626 is used. When the Standard Form 2 is used, reference to the Standard Form 2-A in paragraph 7 must be deleted.

[60 FR 42801, Aug. 17, 1995]

570.802 GSA forms.

(a) The GSA Form 3626, U.S. Government Lease for Real Property (Short Form), may be used to award leases when the simplified leasing procedures in 570.2 are used or when the Contracting Officer finds its use to be advantageous.

(b) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases that involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, restoration settlements, and alterations.

(c) GSA Form 1364, Proposal To Lease Space to the United States of America, may be used to obtain offers from prospective offerors.

[60 FR 42801, Aug. 17, 1995]

APPENDIX A TO CHAPTER 5—
CONTRACTING OFFICE ASSIGNMENT
CODES

NOTE: Appendix A is illustrated in and made a part of the GSAR loose-leaf edition. Appendix A is not illustrated in this volume of the FEDERAL REGISTER or Title 48, Chapter 5 of the Code of Federal Regulations.

CHAPTER 6—DEPARTMENT OF STATE

(Parts 600 to 699)

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SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

Sec.

601.000 Scope of part.

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601.101 Purpose.

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601.601 General.

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601.602-1 Authority.

601.602-3 Ratification of unauthorized commitments.

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601.603 Selection, appointment, and termination of appointment.

601.603-3 Appointment.

601.603-70 Delegations of authority.

601.670 Procurement Career Management Program.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26159, July 11, 1988, unless otherwise noted.

601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and deviation procedures.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66750, Dec. 28, 1994]

Subpart 601.1—Purpose, Authority, Issuance

601.101 Purpose.

The DOSAR is issued to provide Department guidance in accordance with the policy cited in FAR 1.301(a)(2). The portions of this regulation that affects the relationship between a Department of State organization and a contractor or potential contractor are published in this chapter 6 of title 48 of the Code of Federal Regulations, in accordance with FAR 1.301(b).

[59 FR 66750, Dec. 28, 1994]

601.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) requires that Federal agencies obtain approval from the Office of Management and Budget (OMB) before collecting information from ten (10) or more members of the public. The information and record-keeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405-0050.

[59 FR 66750, Dec. 28, 1994]

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201-1 The two councils.

The Office of the Procurement Executive (A/OPE) represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint a representative for this purpose. A/OPE is responsible for coordinating with all interested DOS elements proposed FAR

601.301

revisions and for advocating FAR revisions sought by the Department.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66750, Dec. 28, 1994]

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.

(a)(1) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 1.301 (see Delegation of Authority No. 120 (34 FR 18095, October 30, 1969), as amended by Delegation of Authority No. 120-4 (59 FR 38022, July 26, 1994)). Under Delegation of Authority No. 120-5 (59 FR 62771, December 6, 1994), the Assistant Secretary of State for Administration re-delegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(2) The Department's procurement directives system consists of the following components:

- (i) The DOSAR;
- (ii) Procurement Policy Directives (PPDs), which provide basic policy or procedural guidance and direction. PPDs are issued on an interim basis, and are subsequently incorporated into the next revision of the DOSAR; and
- (iii) Procurement Information Bulletins, which provide general information on topics of interest to contracting personnel.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c).

(c) The DOSAR implements and supplements the FAR.

[59 FR 66751, Dec. 28, 1994]

601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction and leases of real and personal property, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to section 208 of the State Department Basic Authorities Act of 1956, as

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amended (22 U.S.C. 4308), or the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*).

(b) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in those areas which have been exempted by the cognizant administrative office.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR 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 DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101-70.

(b) The DOSAR and its revisions are published in the FEDERAL REGISTER and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c) The DOSAR shall be referenced in the same manner as described at FAR 1.104-2(c).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.403.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e).

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.471 Procedures.

(a) The head of the contracting activity shall submit to the Procurement Executive a written request for each deviation from the FAR or the DOSAR, whether for individual cases, classes of cases, or deviations pertaining to treaties and executive agreements. Each request for a deviation shall state—

(1) The nature of the deviation requested, including whether it is an individual or class deviation;

(2) The FAR or DOSAR regulation from which the deviation is requested;

(3) The circumstances under which the deviation would be used;

(4) The effect intended by the deviation; and

(5) The expiration date recommended for the deviation.

(b) The head of the contracting activity shall also submit all pertinent documentation supporting the request.

(c) The contracting officer shall include in the contract file a copy of each authorized deviation that pertains to the acquisition.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

Subpart 601.5—Agency and Public Participation

601.570 Rulemaking.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with FAR part 1.

(b) The Procurement Executive shall issue all DOS acquisition regulations.

[59 FR 66751, Dec. 28, 1994]

Subpart 601.6—Career Management, Contracting Authority, and Responsibilities

601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.602 Contracting officers.

601.602-1 Authority.

(a) DOS contracts are awarded pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including FAR-covered interagency acquisition agreements, for the expenditure of funds involved in the acquisition of real and personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603-70.

(c) The contracting officer shall not award, modify, or terminate a contract

unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have been obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

[53 FR 26159, July 11, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66751, Dec. 28, 1994]

601.602-3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that usually necessitate disciplinary action against the transgressor, e.g., withdrawal of a contracting officer's warrant or a Contracting Officer's Representative delegation or collection action.

(2) The head of the contracting activity is delegated the authority to serve as the ratifying official for unauthorized contractual commitments not exceeding \$1,000. The head of the contracting activity may refer such actions to the Procurement Executive for ratification if he/she so chooses. All unauthorized commitments in excess of \$1,000 shall be ratified by the Procurement Executive.

(3) Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR Subpart 33.2 and Subpart 633.2.

(c) *Limitations.* The contracting officer is not required to obtain concurrence of legal counsel when recommending payment of an unauthorized commitment. However, the contracting officer is encouraged to obtain legal concurrence if there is a question of proprietary or a legal issue.

[53 FR 26159, July 11, 1988, as amended at 59 FR 66751, Dec. 28, 1994]

601.602-3-70 Procedures.

(a)(1) The person who made the unauthorized commitment shall submit all records and documents concerning the unauthorized commitment to the con-

tracting officer assigned the ratification action. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed, why and how the vendor was selected, a list of other sources considered, a description of work or products, a statement regarding the status of performance, an estimated or agreed price, certified funding citations, and a statement as to why he/she should not be personally liable for the cost, e.g., a public purpose was served and no personal benefit was received.

(2) When the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized commitment.

(3) In addition, a cognizant management official from the office which employed the individual who made the unauthorized commitment at the time the unauthorized commitment was made shall provide a statement detailing actions that he/she will take to ensure that such commitments will not occur again under the same or similar circumstances.

(b) The contracting officer assigned the ratification action shall prepare and execute a recommendation to the ratifying official. The contracting officer shall either recommend that the ratifying official approve and ratify the unauthorized commitment; or, disapprove the ratification of the unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602-3(c)(1) and (c)(3) through (c)(6); and a recommendation to the ratifying official as to whether the unauthorized commitment should be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the ratifying official could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so;

that the ratifying official hereby ratifies (or disapproves) the unauthorized commitment in the amount specified; and a date and signature block for the ratifying official.

(c) The information required in paragraph (b)(1) of this section shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit the complete file to the ratifying official. For actions exceeding \$1,000, the file shall be submitted through the head of the contracting activity to the Procurement Executive.

(e) Upon receipt and review of the complete file, if the ratifying official ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity if the action exceeds \$1,000, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the ratifying official shall return the request to the head of the contracting activity (if over \$1,000) or to the contracting officer if under \$1,000) with a written explanation for the decision and a recommendation for disposition of the action.

(f)(1) When a ratification is approved, the ratifying official shall prepare a letter to the contractor involved in the ratification. The letter shall state the reason(s) why the ratification was approved and provide cautionary language to the contractor regarding future instances of ratification actions.

(2) When a ratification is not approved, the head of the contracting activity shall prepare a letter to the contractor advising that the ratification was not approved. The letter shall cite the reasons for the disapproval.

[59 FR 66751, Dec. 28, 1994]

601.603 Selection, appointment, and termination of appointment.

601.603-3 Appointment.

(a) There is no contracting officer authority conferred upon any DOS employee by virtue of position. The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603-3. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Ap-

pointment, signed by the Procurement Executive. Only qualified employees shall be appointed as contracting officers. A/OPE is responsible for providing guidance and oversight in managing such appointments.

(b) Contracting officers shall be appointed in accordance with the Procurement Career Management Guidebook, available from A/OPE.

(c) *Non-Federal employees.* Only United States Government direct-hire employees who are U.S. citizens shall be appointed as contracting officers. Personal services contractors, Foreign Service Nationals, and Third Country Nationals are not eligible for appointment as DOS contracting officers.

[59 FR 66752, Dec. 28, 1994]

601.603-70 Delegations of authority.

(a) *Delegations.* As stated in 601.603-3(a), there is no contracting officer authority conferred by virtue of position. Pursuant to 601.602-1(b), the Procurement Executive has designated the following as contracting activities as defined in FAR 2.101. These authorities are not redelegable. In addition, specific individuals are designated as heads of contracting activities (HCAs) (see FAR 2.101):

(1) *Overseas posts.* Each overseas post shall be regarded as a contracting activity to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services; to sell personal property; and to lease real property. The Principal Officer, the Administrative Officer, or the Supervisory General Services Officer are designated as HCAs; provided, that he/she has a contracting officer's warrant issued by the Procurement Executive. The Procurement Executive (or authorized A/OPE staff) may delegate to a contracting officer, on a case-by-case basis, the authority to award a contract or modification which exceeds the contracting officer's warrant level.

(i) No authority is delegated to enter into cost-reimbursement, fixed-price incentive, or fixed-price redeterminable contracts.

(ii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named in paragraph

(a)(1) introductory text of this section may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is required to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292 *et seq.*), is delegated to the Deputy Assistant Secretary of State for Foreign Buildings and to the Director for Acquisitions as the HCA.

(3) *Office of Acquisition.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies and nonpersonal services is delegated to the Director and Deputy Director as the HCA.

(4) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 *et seq.*), is delegated to the Director of the Foreign Service Institute, the Executive Director, the Deputy Executive Director, and the Supervisory Contracting Officer as the HCA.

(5) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 *et seq.*), is delegated to the Director, Office of Foreign Missions, and the Administrative Officer as the HCA.

(6) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United

Nations Participation Act of 1945, as amended (22 U.S.C. 287), is delegated to the Counselor for Administration as the HCA.

(7) *Moscow Embassy Building Control Office.* The authority to enter into and administer contracts for the planning, design, and construction of the embassy office building in Moscow is delegated to the Director, Moscow Embassy Building Control Office as the HCA.

(8) *Diplomatic Telecommunication Service—Program Office.* The authority to enter into and administer contracts for the leasing or purchase of telecommunications services, circuits, subsystems, and associated professional services is delegated to the Chief, Acquisition Branch as the HCA.

(9) *Regional Procurement Support Offices.* (i) The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, services, execute leases for real property, and to sell personal property on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(A) RPSO Bonn in conjunction with Embassy Bonn;

(B) RPSO Tokyo in conjunction with Embassy Tokyo;

(C) RPSO Singapore in conjunction with Embassy Singapore; and,

(D) RPSO Miami in conjunction with the Miami Regional Center.

(ii) The RPSOs are under the purview and guidance of A/OPE.

(b) *Other delegations.* Several DOS offices have been delegated limited procurement authority, although they have not been designated as HCAs. Matters requiring HCA resolution are referred to the Office of Acquisition. These delegations are provided only to warranted contracting officers in the respective offices. They are as follows:

(1) *Office of Language Services.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts for interpreting, translating, conference reporting, and related language support and escort services.

(2) *Office of Overseas Schools.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended.

(3) *Library.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended, and for the acquisition of newspapers, books, maps, and periodicals.

(4) *Office of International Conferences.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended.

(5) *Bureau of Population, Refugees, and Migration.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13 and orders against schedule contracts pursuant to the Migration and Refugee Assistance Act of 1962, as amended, and Executive Order 11077, dated January 22, 1963.

(6) *Bureau of International Narcotics and Law Enforcement Affairs.* The authority to enter into and administer simplified acquisition transactions under FAR Part 13, orders against schedule contracts and personal services contracts pursuant to the Foreign Assistance Act of 1961, as amended; and, 48 CFR Chapter 7, Agency for International Development Acquisition Regulation, including any amendments thereto.

[59 FR 66752, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995]

601.670 Procurement Career Management Program.

(a) *Policy.* The Department's Procurement Career Management Program is designed to improve the quality of contracting in the Department through the development and maintenance of professional contracting skills in accordance with the Federal Acquisition Institute's Contract Specialist Workbook and related guidance.

(b) *Procedures.* Details of the Department's Procurement Career Management Program are described in the Department of State Procurement Career Management Guidebook. A/OPE shall provide guidance and oversight.

[59 FR 66753, Dec. 28, 1994]

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

Sec.

602.101 Definitions.

602.101-70 DOSAR definitions.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26162, July 11, 1988, unless otherwise noted.

Subpart 602.1—Definitions

602.101 Definitions.

602.101-70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

Consolidated Receiving Point or *CRP*, means the contractor under contract to a Despatch Agency to receive and prepare items for shipment to a post. The CRP receives, records, consolidates, and packs items for shipment overseas under the direction of the Despatch Agency.

Department or *DOS* means the Department of State, including all of its activities wherever located.

Despatch Agency means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply and Transportation. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and, Seattle, Washington.

Government means the Government of the United States of America unless specifically stated otherwise.

Local procurement means acquisition by a post in the country in which the post is located.

Overseas post means a "post" located outside the United States of America.

Post means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66753, Dec. 28, 1994; 60 FR 39662, Aug. 3, 1995]

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.1—Safeguards

Sec.

603.104 Procurement integrity.

603.104-5 Disclosure, protection, and marking of proprietary and source selection information.

603.104-9 -70 Certification requirements.

603.104-11 Processing violations or possible violations.

Subpart 603.2—Contractor Gratuities to Government Personnel

603.203 Reporting suspected violations of the Gratuities clause.

603.204 Treatment of violations.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.

603.408-1 Responsibilities.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.601 Policy.

603.602 Exceptions.

603.670 Solicitation provision and contract clause.

Subpart 603.7—Voiding and Rescinding Contracts

603.704 Policy.

603.705 Procedures.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 603.1—Safeguards

SOURCE: 59 FR 66753, Dec. 28, 1994, unless otherwise noted.

603.104 Procurement integrity.

603.104-5 Disclosure, protection, and marking of proprietary and source selection information.

(d)(1) The head of the contracting activity is the agency head's designee for the purposes of FAR 3.104-5(d)(1).

(2) The following classes of persons may be authorized access to proprietary or source selection information by the contracting officer or head of the contracting activity when such access is necessary to the conduct of a procurement:

(i) Clerical personnel directly involved in the procurement;

(ii) Supervisors in the contracting officer's chain of command;

(iii) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification; and

(iv) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of the Legal Adviser (L/BA), Office of Legislative Affairs, Office of the Inspector General, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

603.104-9-70 Certification requirements.

(b) Competing contractors are required to complete the "Certificate of Procurement Integrity" and submit it with their bids under IFBs. For RFPs, the apparent successful offeror only need submit the certification. For RFPs, the contracting officer shall contact the apparent successful offeror before award and request that the certificate be submitted within five (5) working days if the certificate was not submitted with the initial proposal. A bid submitted under an IFB that lacks a signed certificate is nonresponsive, and an apparent successful offeror under an RFP who does not submit the required certificate is ineligible for award.

603.104-11 Processing violations or possible violations.

(a) The contract specialist shall report any violation or possible violation

of the procurement integrity requirements immediately to the contracting officer and the Office of the Inspector General. The contracting officer shall follow the procedures in FAR 3.104-11 regarding such violations.

Subpart 603.2—Contractor Gratuities to Government Personnel

603.203 Reporting suspected violations of the Gratuities clause.

DOS personnel shall report immediately and in writing any apparent or suspected violation of the clause at FAR 52.203-3, Gratuities, in connection with any DOS operation. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall identify the individuals involved, outline the events, acts, or conditions which indicate the apparent violation occurred, and include all pertinent documents. The Assistant Inspector General for Investigations shall review the report for completeness and accuracy and shall make a preliminary decision whether to proceed with a full investigation. The Assistant Inspector General for Investigations shall provide the written decision to the individual who made the report and the contracting officer. If the decision is to proceed with an investigation, copies of the decision shall also be provided to the head of the contracting activity, the Procurement Executive, and the Office of the Legal Adviser.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66754, Dec. 28, 1994]

603.204 Treatment of violations.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 3.204.

(b) *Procedures.* Upon a decision to proceed with an investigation of an alleged violation of the Gratuities clause, the Assistant Inspector General for Investigations shall provide to the contractor a written notice by certified mail, return receipt requested. The notice shall present the findings of the decision and shall establish a schedule, including location, for an investigative hearing for the purposes prescribed in FAR 3.204(b). As determined necessary

by the Assistant Inspector General for Investigations, follow-up hearings may be scheduled. Upon completion of the investigation, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a report and recommendation, together with all pertinent documentation.

(c) In addition to the requirements of FAR 3.204(c), when the Procurement Executive determines that a violation has occurred, the Procurement Executive shall so notify the Assistant Inspector General for Investigations. The Assistant Inspector General for Investigations shall then notify the individual who made the report, the Office of the Legal Adviser, and, if appropriate, the Department of Justice.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

(a) DOS employees are obligated to report immediately and in writing any apparent or suspected antitrust violation, as described in FAR 3.303.

(b) The report shall outline the events, acts, or conditions which indicate the apparent violation and shall include all pertinent documents.

(c) The report shall be made to or by the contracting officer, who shall review it for completeness and accuracy and forward it through the head of the contracting activity, to the Office of the Legal Adviser, with a copy to the Procurement Executive. The Office of the Legal Adviser shall provide to the U.S. Attorney General a report on each suspected violation, with single copies to the head of the contracting activity and the Procurement Executive.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66754, Dec. 28, 1994]

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.

603.408-1 Responsibilities.

In carrying out responsibilities prescribed in FAR 3.408-1, the contracting

officer shall obtain advice from the Office of the Legal Adviser as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient for a proper decision. After reviewing and evaluating all the information obtained, the contracting officer shall render a written decision that shall be included in the contract file, and shall provide a copy of the decision to the Procurement Executive.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.601 Policy.

(a) It is Department policy not to award contracts to Federal employees, or businesses substantially owned or controlled by Federal employees.

[59 FR 66754, Dec. 28, 1994]

603.602 Exceptions.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.602.

603.670 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 652.203-70, Prohibition Against the Use of Federal Employees, in all solicitations and contracts, and the provision at 652.203-71, Certification Regarding Federal Employment, in all solicitations.

[59 FR 66754, Dec. 28, 1994]

Subpart 603.7—Voiding and Rescinding Contracts

603.704 Policy.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.704.

[59 FR 66754, Dec. 28, 1994]

603.705 Procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.705.

[59 FR 66754, Dec. 28, 1994]

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—Contract Distribution

Sec.

604.202 Agency distribution requirements.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.

604.404-70 DOSAR contract clauses.

Subpart 604.70—Contract Review

604.7001 Policy.

604.7002 Procedures.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26163, July 11, 1988, unless otherwise noted.

Subpart 604.2—Contract Distribution

604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute reproduced copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the Contracting Officer's Representative; the requirements office; the Despatch Agent or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; and each post or office where the contract will be performed. Where required by the laws of a foreign country, the original copy of the contract or modification shall be retained at the overseas post. Copies of contracts and modifications awarded as small business or 8(a) set-asides shall be sent to A/SDBU.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66754, Dec. 28, 1994]

**Subpart 604.4—Safeguarding
Classified Information Within
Industry**

604.404 Contract clause.

604.404-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.204-70, Security Requirements, in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information (“Confidential,” “Secret,” or “Top Secret”) or access to administratively controlled information (“Limited Official Use”). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contracting officer shall insert the clause at 652.204-71, Security Requirements—Personnel, in solicitations and contracts performed outside the United States.

Subpart 604.70—Contract Review

604.7001 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract file shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

[53 FR 26163, July 11, 1988; 53 FR 36461, Sept. 20, 1988]

604.7002 Procedures.

(a) Prior to issuance of a solicitation or a solicitation amendment which constitutes a substantive change, award of a contract, or execution of a contract modification, any of which is estimated to exceed the thresholds indicated below, the contracting officer shall forward the proposed contractual action to A/OPE for review. For contract modifications, the contracting officer shall submit such actions in accordance with 643.102-70(b). Modifications exercising contract options,

where the options were part of the original solicitation/contract which was reviewed and approved by A/OPE, are exempt from this review requirement:

(1) For domestic contracting activities, all actions over \$5,000,000. There is no review threshold when the contracting activity’s quality assurance plan has been approved by A/OPE;

(2) For overseas posts with contracting officers who have been issued standard name warrants, all actions over \$250,000, with the exception of those actions for local guard services, which require review at \$100,000 and above; and

(3) For overseas posts with contracting officers who have been issued provisional name warrants, all actions over \$100,000.

(4) When calculating the threshold for application of paragraphs (a)(1) through (3) of this section, include the value of the base year plus all option years.

(b) A/OPE shall document the scope and extent of the review and shall submit written recommendations to the contracting officer on each proposed contract action reviewed. In the event the contracting officer and the reviewer cannot reach agreement on the recommendation(s), the contracting officer shall prepare an appeal file to be transmitted to the Procurement Executive. The appeal shall be approved by an individual one management level above the contracting officer prior to its transmission to the Procurement Executive. A resolution shall be worked out between the contracting activity and the Procurement Executive. For purposes of this section, the officer who may transmit the appeal file to the Procurement Executive shall not be the same individual who will sign the contractual document. For overseas posts, where the contracting officer is the head of the contracting activity, the approval authority shall be the Principal Officer.

(c) For postaward reviews, A/OPE shall document the scope and extent of the review and shall submit the results of its findings to the contracting officer for appropriate action.

604.7002

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(d) The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each

head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

[53 FR 26163, July 11, 1988, as amended at 59 FR 66754, Dec. 28, 1994]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

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605.202 Exceptions.

605.202-70 Foreign acquisitions.

605.207 Preparation and transmittal of synopses.

605.207-70 Acquisitions available from only one responsible source.

Subpart 605.3—Synopses of Contract Awards

605.303 Announcement of contract awards.

Subpart 605.4—Release of Information

605.403 Requests from members of Congress.

605.404 Release of long-range acquisition estimates.

605.404-1 Release procedures.

Subpart 605.5—Paid Advertisements

605.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26164, July 11, 1988, unless otherwise noted.

Subpart 605.2—Synopsis of Proposed Contract Actions

605.202 Exceptions.

605.202-70 Foreign acquisitions.

(a) *Policy.* In accordance with a Determination and Findings issued by the Assistant Secretary of State for Administration, the requirement for advance CBD notices for the Department's foreign acquisitions awarded by overseas contracting activities is waived. CBD notices may be published for any acquisition where the contracting officer decides that publication would be in the Department's best interests. This waiver shall remain in effect until June 15, 1998.

(b) *Procedures.* Contracting officers at overseas contracting activities are not required to prepare an individual determination and findings to document

their decision to waive the CBD notice requirements.

(c) *Competition requirements.* Nothing in this section waives the requirement to obtain competition as required by FAR part 6 and DOSAR (48 CFR) part 606. Competition, including the use of written solicitation, shall be obtained in all cases to the extent feasible. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition.

(d) *Policy exclusion.* CBD waiver authority does not apply to local guard service contracts that exceed \$250,000. Local guard service contracts that exceed \$250,000 shall be synopsisized in the CBD. Option year prices shall be included when computing the applicability of this threshold.

[60 FR 39662, Aug. 3, 1995]

605.207 Preparation and transmittal of synopses.

(a)(1) Contracting officers at overseas posts shall submit synopses of proposed contract actions to A/OPE for electronic transmittal to the CBD.

[59 FR 66755, Dec. 28, 1994]

605.207-70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the work and the information a potential source must submit.

Subpart 605.3—Synopses of Contract Awards

605.303 Announcement of contract awards.

(a) Contracting officers shall make information available on awards over \$10 million to the Office of Legislative

605.403

Affairs in sufficient time for an announcement by 5:00 p.m. Washington, DC time on the day of the award. This requirement applies only to awards made by domestic contracting activities where performance will take place within the United States or its possessions.

[59 FR 66755, Dec. 28, 1994]

Subpart 605.4—Release of Information

605.403 Requests from members of Congress.

(a) The Procurement Executive is the agency head for the purposes of FAR 5.403(a).

[59 FR 66755, Dec. 28, 1994]

605.404 Release of long-range acquisition estimates.

605.404-1 Release procedures.

The Procurement Executive is the agency head's designee for the purposes of FAR 5.404-1(a) and the agency head for the purposes of FAR 5.404-1(b).

[55 FR 5774, Feb. 16, 1990]

Subpart 605.5—Paid Advertisements

605.502 Authority.

(a) For paid advertisements in newspapers within the United States, the head of the contracting activity is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in newspapers outside the United States, the head of the contracting activity is the agency's head's designee for the purposes of FAR 5.502(a). When the head of the contracting activity is the contracting officer for the acquisition, no further approvals are necessary.

[59 FR 66755, Dec. 28, 1994]

PART 606—COMPETITION REQUIREMENTS

Subpart 606.1—Full and Open Competition

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606.101 Policy.

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606.101-70 Foreign acquisitions not synopsisized.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

606.302-4 International agreement.

606.302-6 National security.

606.302-7 Public interest.

606.303-1 Requirements.

606.304 Approval of the Justification.

606.304-70 Acquisitions by overseas posts.

606.370 Department of State standardization program.

Subpart 606.5—Competition Advocates

606.501 Requirement.

606.501-70 Overseas posts.

606.570 Solicitation provisions.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

Subpart 606.1—Full and Open Competition

606.101 Policy.

606.101-70 Foreign acquisitions not synopsisized.

As provided in 605.202-70, overseas posts may exempt certain acquisitions from the requirement to synopsisize in the *Commerce Business Daily*. A Commerce Business Daily synopsis is not required for domestic leases, pursuant to 48 CFR 505.202 and 570.202(a).

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 59 FR 66755, Dec. 28, 1994]

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

The Procurement Executive is the agency head for the purposes of FAR 6.202.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(b)(4) The Procurement Executive is the agency head for the purposes of FAR 6.302-1(b)(4).

[59 FR 66755, Dec. 28, 1994]

606.302-4 International agreement.

(b)(2) In accordance with FAR 6.302-4, guard services shall be acquired from the host government only when it is the sole available source.

[59 FR 66755, Dec. 28, 1994]

606.302-6 National security.

(b) This subsection applies to all acquisitions involving national security information, regardless of dollar amount. In no case shall information be classified in order to restrict competition. Information may be classified only when its authorized disclosure could be expected to cause damage to national security.

(c) (1) The Chief, Controls Division, Office of Intelligence Liaison, Directorate for Coordination, Bureau of Intelligence and Research, is responsible for reviewing and certifying on any proposed acquisitions derived from or funded or administered by intelligence community agencies that involve sensitive compartmented information and ensuring that the provisions of E.O. 12356 and FAR 6.302-6 have been met. The Chief, Information Security Programs Division, Office of Information Security Technology, Bureau of Diplomatic Security, is responsible for reviewing and certifying on all other proposed acquisitions funded by the Department of State that involve national security information and ensuring that the provisions of E.O. 12356 and FAR 6.302-6 have been met. When disclosure of the Department's needs through full and open competition would compromise national security, the Justification for Other than Full

and Open Competition shall include the following specific information:

(i) How national security would be compromised if the Department of State's (or other agencies') needs were disclosed in the Commerce Business Daily;

(ii) Why the CBD synopsis cannot be worded in such a manner that national security would not be compromised;

(iii) Necessity for access to classified information to prepare technical and/or cost proposal and level of security clearance required;

(iv) Necessity for access to classified information to perform the proposed contract and level of security clearance required;

(v) Number and value of contracts that the justification covers; and

(vi) A statement as follows: "I hereby certify that the national security concerns of the referenced acquisition(s) meet the criteria set forth in Executive Order 12356 and FAR 6.302-6".

(2) Any acquisition involving national security information shall be publicized in the Commerce Business Daily unless disclosure of the agency's needs would compromise national security.

(3) The contracting officer is responsible for soliciting offers from as many potential sources as is practicable under the circumstances. However, given the sensitivity required for acquisitions involving national security information, it is expected that requirements offices will work closely with the contracting officer in maximizing competition.

[59 FR 66755, Dec. 28, 1994]

606.302-7 Public interest.

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved to the Secretary of State.

606.303-1 Requirements.

Justifications for contract actions prescribed in FAR 6.303-1(d) shall be forwarded by the contracting officer to A/OPE for transmittal to the Office of the United States Trade Representative.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66755, Dec. 28, 1994]

606.304 Approval of the justification.

(a) (2) The approval authority for a proposed contract over \$100,000 but not exceeding \$1,000,000 for domestic contracting activities that do not have a competition advocate is the Department Competition Advocate.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

[59 FR 66755, Dec. 28, 1994]

606.304-70 Acquisitions by overseas posts.

The Departmental Competition Advocate is the approval authority for the purposes of FAR 6.304(a)(3). This authority is not redelegable. Any such justification must be transmitted through the Principal Officer at the overseas post.

[59 FR 66756, Dec. 28, 1994]

606.370 Department of State standardization program.

(a) It is the Department's policy to promote full and open competition in all procurement actions. The authority at 41 U.S.C. 253(c)(1) shall be used with respect to standardization when only specified makes and models of equipment will satisfy the Department's needs and only one source is available. This policy applies to all acquisitions involving standardization, regardless of dollar amount.

(b) Contracts awarded under the authority at 41 U.S.C. 253(c)(1) shall be supported by the written justification described in FAR 6.303. The contracting officer, requirements office, procuring activity competition advocate, and the Procurement Executive shall approve all Justifications for Other than Full and Open Competition that cite standardization of technical equipment as justification to restrict competition. The Administrative Officer at each post is the procuring activity competition advocate for that post and the requirements office at post is the embassy functional office responsible for identifying the need to contract.

(c) Procurement of specified makes and models of technical equipment and systems, for which there is only one source of supply, is considered other

than full and open competition. Such procurements shall be supported by an approved Justification for Other than Full and Open Competition. The justification shall include the content requirements of FAR 6.303-2. The justification shall also address potential cost savings in areas such as inventory, operations, training, maintenance, repairs, and administrative and management support. Areas of consideration for potential cost savings shall be supported by detailed estimates as attachments to the justification. Justifications shall specify an effective period, which shall bear a reasonable relationship to the life of the technical equipment. The effective period shall not exceed six years with a review at the end of the first three years. Periodic reviews shall be made during the standardization period to determine whether the standardization should be continued, revised or canceled.

[59 FR 66756, Dec. 28, 1994]

Subpart 606.5—Competition Advocates**606.501 Requirement.**

(a) The Procurement Executive is the head of the agency for the purposes of FAR 6.501 and designates the Department Competition Advocate.

(b) Contracting activity competition advocates have been designated for A/FBO and A/OPR/ACQ. The Department Competition Advocate is the activity competition advocate for all other domestic contracting activities.

[59 FR 66756, Dec. 28, 1994]

606.501-70 Overseas posts.

The Administrative Officer at each overseas post is the competition advocate for that post.

606.570 Solicitation provisions.

The contracting officer shall insert the provision at 652.206-70, Competition Advocacy/Ombudsman, in all solicitations over the threshold for using simplified acquisition procedures.

[60 FR 39662, Aug. 3, 1995]

**PART 607—ACQUISITION
PLANNING**

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR subpart 1.3.

Subpart 607.1—Acquisition Plans

607.103 Agency-head responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 7.103.

[55 FR 5774, Feb. 16, 1990]

**PART 608—REQUIRED SOURCES OF
SUPPLIES AND SERVICES**

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

**Subpart 608.3—Acquisition of
Utility Services**

608.302 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 8.302(d)(2)(i).

[55 FR 5774, Feb. 16, 1990]

**PART 609—CONTRACTOR
QUALIFICATIONS**

**Subpart 609.2—Qualifications
Requirements**

Sec.

609.202 Policy.

**Subpart 609.4—Debarment, Suspension,
and Ineligibility**

609.403 Definitions.

609.403-70 DOSAR definitions.

609.404 Parties excluded from procurement programs.

609.405 Effect of listing.

609.405-1 Continuation of current contracts.

609.405-2 Restrictions on subcontracting.

609.405-70 Termination action decision.

609.406 Debarment.

609.406-1 General.

609.406-3 Procedures.

609.407 Suspension.

609.407-1 General.

609.407-3 Procedures.

**Subpart 609.5—Organizational Conflicts of
Interest**

609.503 Waiver.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26165, July 11, 1988, unless otherwise noted.

**Subpart 609.2—Qualifications
Requirements**

609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

**Subpart 609.4—Debarment,
Suspension, and Ineligibility**

609.403 Definitions.

Debarring official means the Procurement Executive.

Suspending official means the Procurement Executive.

609.403-70 DOSAR definitions.

Fact-finding official means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

Notice means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406-3 and FAR 9.407-3.

609.404 Parties excluded from procurement programs.

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without

power of redelegation, to the head of the contracting activity.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988, as amended at 55 FR 5774, Feb. 16, 1990; 59 FR 66756, Dec. 28, 1994]

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d) In accordance with a FAR class deviation granted by the Procurement Executive, the following actions apply to actions awarded by DOS contracting activities:

(1) (i) Contracting officers at overseas contracting activities may rely on the debarment certification submitted by bidders/offerors (FAR 52.209-5) as proof of eligibility for award when access to the current "Lists of Parties Excluded from Procurement Programs" is not reasonably available. For contracts which require A/OPE review and approval, the contracting officer should request that A/OPE perform the required review if the list is not available.

(4) (i) For procurement actions (both domestic and overseas) that do not exceed the threshold for using simplified acquisition procedures, contracting officers need not consult the "List of Parties Excluded from Procurement Programs" prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the "List of Parties Excluded from Procurement Programs", either in hard copy or electronic form, prior to award.

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995]

609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405-70.

609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405-2.

609.405-70 Termination action decision.

(a) Prior to making a decision to terminate, based on the consideration listed below, the contracting officer shall have the proposed action reviewed and approved by:

- (1) The Office of the Legal Adviser;
- (2) An individual one level above the contracting officer; and
- (3) For overseas posts, A/OPE.

(b) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(c) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

- (1) Seriousness of the cause for debarment or suspension;
- (2) Extent of contract performance;
- (3) Potential costs to the Government;
- (4) Urgency of the requirement and the impact of the delay; and/or
- (5) Availability of other safeguards to protect the Government's interests.

[53 FR 26165, July 11, 1988, as amended at 59 FR 66756, Dec. 28, 1994]

609.406 Debarment.

609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406-1(c).

609.406-3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406-2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a

transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406-3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406-3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406-3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official

shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406–3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational elements affected by the determination.

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406–3(d) and FAR 9.406–3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

[53 FR 26165, July 11, 1988; 53 FR 36461, Sept. 20, 1988]

609.407 Suspension.

609.407–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407–1(d).

609.407–3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406–3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407–2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407–3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407–3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406–3(a), except that the suspending official shall process the notice in accordance with FAR 9.407–3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407–3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

610.002 Policy.

610.002–70 Metric system implementation.

(a) *Policy.* The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) requires Federal agencies to establish implementing guidelines pursuant to metric policy established under Sec. 5164 of the Act to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This subsection establishes the Department of State metric conversion guidelines for transition from the traditional system to the metric system of weights and measurements.

(b) *Applicability.* This subsection applies to all DOS procurements, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(c) Definitions.

Dual systems means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid systems means the use of both traditional and hard metric values in specifications, standards, supplies and services. For example, an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

Measurement sensitive means any item whose application or meaning depends substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations on items in commerce.

Metrication means any act that increases metric system use, including metric training and initiation or conversion of measurement-sensitive processes and systems to the metric system.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures. The units are listed in Federal Standard 376A, Preferred Metric Units for General Use by the Federal Government.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies and services. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the "inch-pound system". The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) *Procedures.* (1) DOS contracting activities shall implement the metric system in a manner consistent with Pub. L. 100-418.

(2) All DOS contracting activities shall use the metric system in procurement consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system, by acquiring commercially available

metric products and services that meet the Department's needs whenever practical. Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms. The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available for the National Technical Information Service (# PB89-226922); and

(ii) Contracting officers shall return all statements of work/specifications that are not expressed in some form of metric terms to the requirements office that prepared the documents, if the contract is expected to exceed \$500,000, unless the requirements office has forwarded to the contracting activity for approval, in a waiver format prescribed by the head of the contracting activity, a justification for the use of non-metric specifications/statements of work. Option year prices shall be considered when computing the \$500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules, or if the contract is not expected to exceed \$500,000.

(5) Valid justifications for non-metric specifications/word statements include, but are not limited to:

(i) Existing specifications and standards in inch-pound units, unless conversions is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components shall be avoided if the total cost of the retrofit, including re-design costs, exceeds \$50,000;

(ii) When metric is not the accepted industry system with respect to a business-related activity, soft metric, hybrid or dual system may be used during transition to hard metric; and

(iii) When the use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prepared by the requirements office prior to the release of a solicitation that incorporates a specification that is not written in some form of

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metric, if the resultant contract is expected to exceed \$500,000. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation.

(7) The Department's direct in-house operating metric conversion costs shall be handled as normal operating expenses rather than as special one time costs or included as a budget line item. However, these costs are to be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric speci-

fications. All contracting activities and requirements offices shall maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

[59 FR 66756, Dec. 28, 1994, as amended at 60 FR 39662, Aug. 3, 1995]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 613.1—General

Sec.

613.103 Policy.

613.103-70 Acquisition by overseas posts.

Subpart 613.4—Imprest Fund

613.403 Conditions for use.

Subpart 613.5—Purchase Orders

613.501 General.

613.505 Purchase order and related forms.

613.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

613.505-70 File folders for simplified acquisitions, delivery orders, and blanket purchase agreements.

613.507 Provisions and clauses.

613.507-70 DOSAR clauses.

Subpart 613.6-70—Governmentwide Commercial Purchase Card Program

613.601-70 Policy.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26167, July 11, 1988, unless otherwise noted.

Subpart 613.1—General

613.103 Policy.

613.103-70 Acquisition by overseas posts.

Overseas posts shall ensure that the terms and conditions prescribed in FAR Part 13 are added or incorporated by reference on the documents used for purchase orders from U.S. vendors.

[53 FR 26167, July 11, 1988, as amended at 59 FR 66757, Dec. 28, 1994; 60 FR 39662, Aug. 3, 1995]

Subpart 613.4—Imprest Fund

613.403 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.403(a).

[53 FR 26167, July 11, 1988. Redesignated and amended at 60 FR 39662, Aug. 3, 1995]

Subpart 613.5—Purchase Orders

613.501 General.

The contracting officer shall distribute copies of each purchase order in conformance with Subpart 604.2.

613.505 Purchase order and related forms.

613.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation.

(a) The OF-347 and OF-348 shall be mandatory for use by domestic contracting activities for issuing purchase orders and delivery orders, unless ordering against another Federal agency contract which stipulates a different form (e.g., DD-1155, Order for Supplies or Services); or, unless the Procurement Executive has approved another form. The OF-347 may also be used as a voucher.

(b) In lieu of the OF-347 and OF-348, DOS overseas contracting activities may use the Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.303-206 and 653.303-206A, respectively). When using the OF-206, contracting activities may use Optional Form (OF) 127, Receiving and Inspection Report (illustrated at 653.303-127), for that purpose.

[60 FR 39662, Aug. 3, 1995]

613.505-70 File folders for simplified acquisitions, delivery orders, and blanket purchase agreements.

Contracting officers shall use Forms DST-1918, Purchase Order File; DST-

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1919, Delivery Order File; and, DST-1920, Blanket Purchase Agreement (BPA) File, to record relevant data and document those purchases, respectively.

[59 FR 66758, Dec. 28, 1994]

613.507 Provisions and clauses.

613.507-70 DOSAR clauses.

In addition to the FAR provisions and clauses required for or applicable to the particular acquisition, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses shall be listed on a separate document and attached to each copy of the purchase order. The document shall be identified by the purchase order number and the name and address of the contracting activity. The DOSAR clauses may be incorporated without setting out full text.

[60 FR 39663, Aug. 3, 1995]

Subpart 613.6-70—Government-wide Commercial Purchase Card Program

613.601-70 Policy.

(a) *Scope.* This subsection sets forth policy for use of the Government purchase card when making small purchases.

(b) *Policy.* It is the Department's policy that:

(1) The purchase card shall be used in preference to other methods of procurement (particularly BPAs) for individual purchases up to \$2,500;

(2) The purchase card shall be issued primarily to personnel outside of the procurement office to purchase products and services up to \$2,500 quickly with a minimum of paperwork and without having to send an individual requisition to a procurement office; and,

(3) The purchase card may be used in procurement offices for purchases up to \$25,000.

(c) *Procedures.* Specific procedures for implementation shall be developed by each contracting activity that wishes to participate in the program. These

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procedures shall be approved by A/OPE prior to implementation.

[59 FR 66758, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

PART 614—SEALED BIDDING

Subpart 614.2—Solicitation of Bids

Sec.

614.201 Preparation of Invitation for Bids (IFB).

614.201-7 Contract clauses.

614.201-7 -70 DOSAR contract clauses.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of Bids.

614.402-1 Unclassified bids.

614.402-70 Waiver of public opening of bids.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

614.406 Mistakes in bids.

614.406-3 Other mistakes disclosed before award.

614.406-4 Mistakes after award.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26168, July 11, 1988, unless otherwise noted.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201-7 Contract clauses.

614.201-7-70 DOSAR contract clauses.

(a) Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

(b) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-70, Notices, in all solicitations and contracts awarded or performed overseas.

(c) When contracting by sealed bidding, the contracting officer shall insert the provision at 652.214-71, Authorization to Perform, in all solicitations

for contracts to be awarded or performed overseas.

[53 FR 26168, July 11, 1988, as amended at 59 FR 66758, Dec. 28, 1994]

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402-1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

614.402-70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

The authority to make the determination prescribed in FAR 14.404-1(c) is delegated, without power of redelegation, to the head of the contracting activity. The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

[53 FR 26168, July 11, 1988, as amended at 59 FR 66758, Dec. 28, 1994]

614.406 Mistakes in bids.

614.406-3 Other mistakes disclosed before award.

The authority to make the determinations prescribed in FAR 14.406 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

614.406-4 Mistakes after award.

The authority to make all determinations prescribed in FAR 14.406-4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before making any determinations pursuant to this subsection.

PART 615—CONTRACTING BY NEGOTIATION

Subpart 615.1—General Requirements for Negotiations

Sec.

615.106 Contract clauses.

615.106-1 Examination of Records clause.

615.106-70 DOSAR contract clauses.

Subpart 615.4—Solicitation and Receipt of Proposals and Quotations

615.403 Solicitation mailing lists.

615.404 Presolicitation notices and conferences.

615.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

615.406-1 Uniform contract format.

615.413 Disclosure and use of information before award.

615.413-2 Alternate II.

Subpart 615.5—Unsolicited Proposals

615.504 Advance guidance.

615.506 Agency procedures.

Subpart 615.6—Source Selection

615.604 Responsibilities.

615.607 Disclosure of mistakes before award.

615.608 Proposal evaluation.

615.612 Formal source selection.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26168, July 11, 1988, unless otherwise noted.

Subpart 615.1—General Requirements for Negotiation

615.106 Contract clauses.

615.106-1 Examination of Records clause.

See Subpart 625.9 for conditions for omission of the Examination of Records clause.

615.106-70 DOSAR contract clauses.

When contracting by negotiation, the contracting officer shall insert the clauses at 652.214–70, Notices, and 652.214–71, Authorization to Perform, in all solicitations and contracts, under the same conditions prescribed in 614.201–7–70.

[53 FR 26168, July 11, 1988, as amended at 59 FR 66758, Dec. 28, 1994]

Subpart 615.4—Solicitation and Receipt of Proposals and Quotations

SOURCE: 59 FR 66758, Dec. 28, 1994, unless otherwise noted.

615.403 Solicitation mailing lists.

Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205–5(a). However, the list of those firms which actually submitted proposals is not releasable. Requests for information other than solicitation mailing lists shall be handled by the Department's Office of Freedom of Information.

615.404 Presolicitation notices and conferences.

(c)(1) The Procurement Executive has approved a class deviation from the requirements of FAR 15.404(c)(1). Approval for presolicitation conferences at one level above the contracting officer is not required.

615.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

615.406-1 Uniform contract format.

(a) The uniform contract format shall be mandatory for all acquisitions outside the United States, its possessions, its territories, and Puerto Rico,

with the exception of those contracts listed in FAR 15.406–1(a) (1) through (8), unless a waiver is granted by the Procurement Executive. The Procurement Executive is the agency head's designee for the purposes of FAR 15.406–1(a)(7).

615.413 Disclosure and use of information before award.

615.413-2 Alternate II.

Contracting officers may determine to use the alternate procedures listed in FAR 15.413–2 in cases deemed appropriate. These procedures must be used when releasing proposals outside the Government for evaluation purposes.

(e) Contracting officers shall place the notice specified in FAR 15.413–2(e) on all proposals when using these alternate procedures.

(f) Release of proposals outside the Government is authorized.

(1) The Procurement Executive is the agency head's designee for the purposes of FAR 15.413–2(f)(1).

Subpart 615.5—Unsolicited Proposals

615.504 Advance guidance.

(a) The contact points for unsolicited proposals are the heads of the contracting activities.

[59 FR 66758, Dec. 28, 1994]

615.506 Agency procedures.

(a) The contact points shall ensure that unsolicited proposals are controlled, evaluated, safeguarded, and disposed of in accordance with FAR Subpart 15.5.

[59 FR 66758, Dec. 28, 1994]

Subpart 615.6—Source Selection

615.604 Responsibilities.

(a) The head of the contracting activity is the agency head's designee for the purposes of FAR 15.604(a).

[59 FR 66759, Dec. 28, 1994]

615.607 Disclosure of mistakes before award.

The authority to make the determination prescribed in FAR 15.607(c)(3)

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is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 15.607(c)(3)(ii), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

[53 FR 26168, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

615.608 Proposal evaluation.

The authority to make the determination prescribed in FAR 15.608(b) is delegated, without power of redelegation, to the head of the contracting activity. The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this section.

[53 FR 26168, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

615.612 Formal source selection.

The authority prescribed in FAR 15.612(b), including the authority to designate a source selection authority, is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The waiver authority prescribed in FAR 15.804-3(i) is delegated, without power of redelegation, to the head of the contracting activity.

PART 616—TYPES OF CONTRACTS

Sec.

616.000 Scope of part.

Subpart 616.1—Selecting Contract Types

616.102 Policies.

616.102-70 Overseas posts.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-price contracts with economic price adjustment.

616.203-4 Contract clauses.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.

616.306 Cost-plus-fixed-fee contracts.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.

616.505-70 DOSAR contract clause.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.

616.603-2 Application.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

616.000 Scope of part.

The contracting officer may use any of the contract types described in FAR part 16 for acquisitions made under simplified acquisition procedures. The contracting officer shall document his/her decision to use a contract type in accordance with the requirements of FAR part 16.

[60 FR 39963, Aug. 3, 1995]

Subpart 616.1—Selecting Contract Types

616.102 Policies.

616.102-70 Overseas posts.

Pursuant to 601.603-70(a)(1)(i), no authority is delegated to overseas posts to enter into cost-reimbursement, fixed-price incentive, or fixed-price re-determinable contracts, unless the Procurement Executive's approval is obtained. Such requests shall be submitted by the head of the contracting activity on a case-by-case basis.

[59 FR 66759, Dec. 28, 1994]

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

Contracting officers at domestic contracting activities may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203-4(d) and after obtaining the approval of the head of the contracting activity. Overseas posts may use the clause at 652.216-71, Price Adjustment, when procuring continuing services (*e.g.*, guard, janitorial, building maintenance, and gardening). Posts shall obtain A/OPE approval for any price adjustment clause that differs from the clause at 652.216-71.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207-3.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.

The determination and findings prescribed in FAR 16.301-3(c) shall be executed by the contracting officer.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

616.306 Cost-plus-fixed-fee contracts.

The authority to make the determination prescribed in FAR 16.306(c)(2) is delegated to the head of the contracting activity. This authority may be redelegated.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.

616.505-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216-70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216-20, Definite Quantity, or the clause at FAR 52.216-21, Requirements, or the clause at FAR 52.216-22, Indefinite Quantity, is used.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.

616.603-2 Application.

The contracting officer, after obtaining approval of the head of the contracting activity, is authorized to extend the period to definitize a letter contract in accordance with FAR 16.603-2(c) and when such action is in the best interest of the Government. For this purpose, the contracting officer shall execute a written determination and findings, and submit it to the head of the contracting activity for approval. For cases where the contracting officer is also the head of the contracting activity, the Procurement Executive shall approve the determination and findings.

[53 FR 26169, July 11, 1988; 53 FR 36462, Sept. 20, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

PART 617—SPECIAL CONTRACTING METHODS

Subpart 617.1—Multiyear Contracting

Sec.

617.102 Policy.

617.102-2 General.

617.102-3 Objectives.

Subpart 617.2—Options

617.201 Definitions.

617.201-70 DOSAR Definitions.

617.204 Contracts.

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Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.
617.504-70 Ordering procedures.

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26169, July 11, 1988, unless otherwise noted.

Subpart 617.1—Multiyear Contracting

617.102 Policy.

617.102-2 General.

(a) Pursuant to section 14 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2679a), any DOS acquisition for property or services, or both, by any contract funded on the basis of annual appropriations may nevertheless be made for periods not in excess of 5 years when—

(1) Appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

(2) The Procurement Executive determines that—

(i) The need of the Government for the property or services being acquired over the period of the contract is reasonably firm and continuing;

(ii) Such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation; and

(iii) Such a method of contracting will not inhibit small business participation.

(b) For overseas posts, the Procurement Executive may delegate to the Principal Officer, on an individual contract or class of contracts basis, the authority to make the determination required by paragraph (a)(2) above. The Principal Officer may not redelegate this authority.

(c) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall

be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

(d) Any multiyear contract awarded pursuant to this subsection shall not exceed 5 years, including options, in accordance with FAR Subpart 17.2, unless approved by the Procurement Executive in accordance with DOSAR 617.204(e).

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

617.102-3 Objectives.

(d)(3) The head of the contracting activity is the agency head's designee for the purposes of FAR 17.102-3(d)(3). For those cases where the contracting officer is also the head of the contracting activity, the Procurement Executive shall be the agency head's designee.

[59 FR 66759, Dec. 28, 1994]

Subpart 617.2—Options

617.201 Definitions.

617.201-70 DOSAR Definitions.

Evaluated option means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

Price option means an option where the amount for the option is specified in or is reasonably determinable from the terms of the basic contract, as described in FAR 17.207(f) (1) through (5).

Unevaluated option means an option that is not included in the evaluation for award purposes.

Unpriced option means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

617.204 Contracts.

(e) The Procurement Executive shall approve any solicitations or contracts

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which exceed the five (5) year maximum length for supplies or services.

[59 FR 66759, Dec. 28, 1994]

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

The authority to make the determination prescribed in FAR 17.502 is delegated to the head of the contracting activity.

[53 FR 26169, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994]

617.504-70 Ordering procedures.

(a) Department deputy assistant secretaries are authorized to execute Economy Act IAAs. Department contracting officers also are authorized to

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execute Economy Act IAAs, as prescribed in FAR 17.504(a).

(b) Department of State form DS-1921, Award/Modification of Interagency Acquisition Agreement (illustrated in part 653), shall be used for all Economy Act IAAs where the Department is the requesting agency. It shall also be used for Economy Act IAAs where the Department is the servicing agency if the requesting agency does not have a similar form that provides the same information.

[59 FR 66759, Dec. 28, 1994]

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

SOURCE: 53 FR 26170, July 11, 1988, unless otherwise noted.

Subpart 619.2—Policies

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619.810 SBA appeals.
619.812 Contract administration.
619.870 Acquisition of technical requirements.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 619.2—Policies

619.201 General policy.

(a) The Operations Director, Office of Small and Disadvantaged Business Utilization (A/SDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603-70), or designee, is responsible for establishing in coordination with the A/SDBU Operations Director annual goals for the DOS small and disadvantaged business program.

(c) The Assistant Secretary of State for Administration is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

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

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

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of the simplified acquisition limitation to assure that

small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides. This includes proposed contract modifications for new or additional requirements which do not fall within the original scope of the contract and which exceed the simplified acquisition threshold. This does not include the exercising of contract options;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

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

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Semi-

nars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

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

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small business, small disadvantaged business, and labor surplus area matters as authorized by the A/SDBU Operations Director.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66759, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995]

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the A/SDBU Operations Director shall perform the action so required.

Subpart 619.5—Set-Asides for Small Business

619.501 General.

(c) Contracting officers shall use Department of State Form DS-1910, Small Business/Labor Surplus Area Review—

Department of State

619.705-6-70

Actions Above the Simplified Acquisition Threshold, to document set-aside decisions.

[59 FR 66759, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

619.505 Rejecting set-aside recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

619.506 Withdrawing or modifying set asides.

(b) The Procurement Executive shall resolve disagreements between the A/SDBU Operations Director and the contracting officer.

[59 FR 66759, Dec. 28, 1994]

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

The contracting officer shall transmit to the A/SDBU Operations Director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a).

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

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

619.705-1 General support of the program.

It is the Department's policy to incorporate its current fiscal year goals as negotiated with the SBA into all pertinent Department solicitations, in addition to the standard subcontract clauses. Incorporation of the goals does not require that large business prime contractors must subcontract, but does require that to the extent they plan to subcontract, specific goals be established for doing business with small,

small disadvantaged, and women-owned firms. Where funds are available, an incentive clause such as that found in FAR 52.219-10, Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, is encouraged.

[59 FR 66760, Dec. 28, 1994]

619.705-3 Preparing the solicitation.

Whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Program, is used in a solicitation for a negotiated acquisition, a notification also must be included in the solicitation. This notification shall advise prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range. To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66760, Dec. 28, 1994]

619.705-4 Reviewing the subcontracting plan.

A/SDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. A/SDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

619.705-6 Postaward responsibilities of contracting officer.

619.705-6-70 Reporting responsibilities.

(a) The contracting officer shall forward to the A/SDBU Operations Director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting

plans in support of small and small disadvantaged business concerns. This data shall be collected annually and semiannually, using Standard Form 295, Summary Subcontracting Report, for the annual submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semi-annual submissions. The head of the contracting activity shall forward these reports to the A/SDBU Operations Director, not later than the 30th day of the month following the close of the reporting period.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66760, Dec. 28, 1994]

619.708-70 Solicitation provisions and contract clauses.

The contracting officer shall insert a provision substantially the same as the provision at 652.219-70, Department of State Subcontracting Goals, in solicitations whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, is used.

[59 FR 66760, Dec. 28, 1994]

Subpart 619.8—Contracting with the Small Business Administration (the 8(a) Program)

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

[59 FR 66760, Dec. 28, 1994]

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.810 SBA appeals.

The Procurement Executive is the agency head for the purposes of FAR 19.810.

[59 FR 66760, Dec. 28, 1994]

619.812 Contract administration.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

[59 FR 66760, Dec. 28, 1994]

619.870 Acquisition of technical requirements.

(a) *Offering Letter.* When a decision has been made by the A/SDBU and contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the SDBUS. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the concerns solicited under an 8(a) program acquisition if under the \$3 million competitive threshold for 8(a) competition than under a non-8(a) program acquisition. Informal assessments of 8(a) concerns shall be within the parameters of 13 CFR 124.308(g). The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

[53 FR 26170, July 11, 1988, as amended at 59 FR 66760, Dec. 28, 1994]

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 622.3—Contract Work Hours and Safety Standards Act

Sec.

622.302 Liquidated damages and overtime pay.

Department of State

622.404-11

Subpart 622.4—Labor Standards for Contracts Involving Construction

- 622.401 Definitions.
- 622.404 Davis-Bacon Act wage determinations.
- 622.404-3 Procedures for requesting wage determinations.
- 622.404-6 Modifications of wage determinations.
- 622.404-7 Correction of wage determinations containing clerical errors.
- 622.404-11 Wage determination appeals.
- 622.406 Administration and enforcement.
- 622.406-1 Policy.
- 622.406-3 Additional classifications.
- 622.406-8 Investigations.
- 622.406-9 Withholding from or suspension of contract payments.
- 622.406-10 Disposition of disputes concerning construction contract labor standards enforcement.
- 622.406-11 Contract terminations.
- 622.406-12 Cooperation with the Department of Labor.

Subpart 622.6—Walsh-Healey Public Contracts Act

- 622.604 Exemptions.
- 622.604-2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

- 622.807 Exemptions.

Subpart 622.13—Special Disabled and Vietnam Era Veterans

- 622.1303 Waivers.
- 622.1308 Contract clauses.

Subpart 622.14—Employment of the Handicapped

- 622.1403 Waivers.
- 622.1408 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 622.3—Contract Work Hours and Safety Standards Act

622.302 Liquidated damages and overtime pay.

The authority to make the determination prescribed in FAR 22.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5774, Feb. 16, 1990]

Subpart 622.4—Labor Standards for Contracts Involving Construction

SOURCE: 55 FR 5774, Feb. 16, 1990, unless otherwise noted.

622.401 Definitions.

(b) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The terms "apprentice" and "trainee" are defined as follows:

(1) *Apprentice* has the same definition as in FAR 22.401(b)(1).

(2) *Trainee* has the same definition as in FAR 22.401(b)(2).

(3) The definition for *helper* as described in FAR 22.401 paragraph (b)(3) of the definition of *Laborers* or *mechanics* is reserved.

[59 FR 66760, Dec. 28, 1994]

622.404 Davis-Bacon Act wage determinations.

622.404-3 Procedures for requesting wage determinations.

The cognizant contracting activity (see 601.603-70) is the contracting agency for the purposes of FAR 22.404-3(b) and (e)

622.404-6 Modifications of wage determinations.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-6.

(b)(6) The head of the contracting activity is the agency head's designee for the purposes of FAR 22.404-6(b)(6).

[55 FR 5774, Feb. 16, 1990, as amended at 59 FR 66760, Dec. 28, 1994]

622.404-7 Correction of wage determinations containing clerical errors.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-7.

622.404-11 Wage determination appeals.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.404-11.

622.406

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622.406 Administration and enforcement.

Subpart 622.8—Equal Employment Opportunity

622.406-1 Policy.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-1(a).

622.807 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

622.406-3 Additional classifications.

(b)(4) FAR 22.406-3 paragraph (b)(4) is reserved.

Subpart 622.13—Special Disabled and Vietnam Era Veterans

[59 FR 66760, Dec. 28, 1994]

622.1303 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1303.

622.406-8 Investigations.

(a) The chief of the contracting activity is responsible for conducting labor standards investigations as prescribed in FAR 22.406-8(a).

622.1308 Contract clauses.

The Procurement Executive is the agency head for the purposes of FAR 22.1308 (a)(2) and (c).

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 22.406-8(d).

[55 FR 5775, Feb. 16, 1990]

622.406-9 Withholding from or suspension of contract payments.

The authority to suspend contract payments pursuant to FAR 22.406-9(b) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

622.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-10(b).

622.1408 Contract clause.

The Procurement Executive is the agency head for the purposes of FAR 22.1408.

[55 FR 5775, Feb. 16, 1990]

622.406-11 Contract terminations.

The cognizant contracting activity is the contracting agency for the purposes of FAR 22.406-11.

PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORK-PLACE

622.406-12 Cooperation with the Department of Labor.

Any information furnished to the Department of Labor pursuant to FAR 22.406-12(a) shall be submitted through the head of the contracting activity.

Subpart 623.1—Pollution Control and Clean Air and Water

Sec.

623.104 Exemptions.

623.107 Compliance responsibilities.

Subpart 622.6—Walsh-Healey Public Contracts Act

Subpart 623.3—Hazardous Material Identification and Material Safety Data

622.604 Exemptions

623.302-70 Policy.

622.604-2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604-2(c)(1).

Subpart 623.4—Use of Recovered Materials

623.470 Affirmative procurement program for recovered materials.

623.471 Purpose.

623.472 Applicability.

Department of State

623.473

- 623.473 Definitions.
- 623.474 EPA guidelines.
- 623.475 Responsibilities.
- 623.476 Preference programs for guideline items.
- 623.476-1 Preference program for the purchase of cement and concrete containing fly ash.
- 623.476-2 Preference program for building insulation products containing recovered materials.
- 623.476-3 Preference program for lubricating oils containing recovered materials.
- 623.476-4 Preference program for retread tires.
- 623.476-5 Preference program for paper and paper products containing recovered materials.
- 623.477 Promotion program.
- 623.478 Evaluation and certification.
- 623.479 Annual review and monitoring.
- 623.480 Solicitation provisions and contract clauses.

Subpart 623.5—Drug-Free Workplace

- 623.506 Suspension of payments, termination of contract, and debarment and suspension actions.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

623.107 Compliance responsibilities.

The Procurement Executive is the agency head's designee for the purposes of FAR 23.107.

Subpart 623.3—Hazardous Material Identification and Material Safety Data

623.302-70 Policy.

Any work which affects the safety and/or health of post personnel, including the handling of hazardous materials, shall comply with the applicable requirements of the Department of State Safety/Health and Environmental Management Resource Guide (6 FAM 606.7). Requirements offices shall ensure that any contractor operations and activities, whether sponsored by

the post or other Department organization, are closely coordinated with the Post Occupational Safety and Health Officer during both planning and implementation phases.

[59 FR 66760, Dec. 28, 1994]

Subpart 623.4—Use of Recovered Materials

SOURCE: 59 FR 66760, Dec. 28, 1994, unless otherwise noted.

623.470 Affirmative procurement program for recovered materials.

623.471 Purpose.

This section establishes the Department of State's Affirmative Procurement Program for Recovered Materials in accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962, Pub. L. 94-580). Section 6002 requires that each agency develop an affirmative procurement plan to assure that items composed of recovered materials will be purchased to the maximum extent practical and which is consistent with Federal procurement law. It requires that preference be given in procurement programs to the purchase of items containing recycled materials identified in guidelines promulgated by the Environmental Protection Agency (EPA). Executive Order 12780, Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy, directed implementation of cost effective affirmative procurement programs for recycled items.

623.472 Applicability.

The affirmative procurement program is applicable to all domestic acquisition of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.473 Definitions.

Affirmative procurement program is a program which ensures that items composed of recovered materials will be purchased to the maximum extent

practicable, consistent with Federal procurement law. There are four components to an affirmative procurement program: (1) A preference program; (2) a promotion program; (3) procedures for requiring, obtaining and verifying estimates and certifications of recovered materials content; and, (4) an annual review and monitoring.

Designated item is an item that has been designated in an EPA procurement guideline as an item that is or can be produced using recovered materials whose procurement will advance the purpose of RCRA.

Minimum-content standard is the minimum content of recovered materials that a designated item must contain pursuant to specifications implementing the Department's preference program.

Postconsumer recovered materials are waste materials recovered from retail stores, office buildings, homes, and so forth after they have passed through their end usage as a consumer item. Waste paper includes all items from the first two categories above in addition to forest residues, and manufacturing and other wastes.

Procurement guidelines are guidelines issued by the EPA pursuant to Section 6002 of RCRA: (1) Identifying items that are or can be produced with recovered materials and where procurement will advance the objectives of the Act; and, (2) providing recommended practices for the procurement of such items.

Recovered materials are waste materials and by-products that have been recovered or diverted from solid waste, not including those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Unreasonable price is the price for products containing recovered materials which exceeds alternatives made with virgin materials by 10 percent or more, and which the requirements office initiating the acquisition substantiates as exorbitant.

623.474 EPA guidelines.

(a) The EPA has published five guidelines that designate the following items that are or can be produced using

recovered materials. Accordingly, contracting activities shall procure items produced using recovered materials to the maximum extent possible when procuring these designated items:

(1) Cement and concrete containing fly ash, 40 CFR part 249;

(2) Paper and paper products, 40 CFR part 250;

(3) Lubricating oils, 40 CFR part 252;

(4) Retread tires, 40 CFR part 253; and,

(5) Building insulation products, 40 CFR part 248.

(b) Copies of these guidelines, as well as future guidelines promulgated by EPA, may be obtained by calling EPA's Recycled Products Information Clearinghouse at (703) 941-4452.

(c) These guidelines are applicable when the Department purchases more than \$10,000 worth of a designated item, or if the cost of all such items purchased by the Department during the preceding Fiscal Year was \$10,000 or more.

§623.475 Responsibilities.

(a) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase items subject to the guidelines containing other than recovered materials only if:

(1) The price of items with recovered materials is unreasonable;

(2) The requirement for items produced with recovered materials results in inadequate competition or adversely affects small business or the Department's metrication program;

(3) Obtaining items with recovered materials results in unusual and unreasonable delays; or

(4) Items produced with recovered materials do not meet all reasonable performance specifications.

(b) If the requirements office chooses to procure designated items that do not contain recovered materials, a written justification must be submitted to the contracting officer.

623.476 Preference programs for guideline items.**623.476-1 Preference program for the purchase of cement and concrete containing fly ash.**

Domestic contracts requiring the purchase of cement and concrete shall specify the performance requirements of the products required under the contract using appropriate standards/specifications when available. Consistent with such performance specifications, such contracts shall allow the contractor to deliver cement and concrete products that contain fly ash, a component of coal resulting from its combustion in electrical generating plants. Architects/Engineers shall specify performance requirements for the concrete to be supplied.

623.476-2 Preference program for building insulation products containing recovered materials.

Minimum content standards for building insulation products have been established by EPA guidelines. Domestic contracts for the design of structures that will utilize building insulation products shall require that the Architect/Engineer include, as a design consideration, the Department preference for the use of building insulation produced with recovered materials. Such contracts shall require that the Architect/Engineer specify the type of building insulation products to be supplied and shall require the Architect/Engineer to justify, in writing, the basis of the selected product type if it is not in accordance with the EPA guideline.

623.476-3 Preference program for lubricating oils containing recovered materials.

Contracts requiring the supply of lubricating oils, hydraulic fluids and gear oils shall require that products conform to the EPA guideline.

623.476-4 Preference program for retread tires.

Contracts requiring replacement tires for automobiles, light and heavy trucks and trailers, and off-road tires shall specify that retreading services shall be obtained if the carcass is retreadable. If such retreading services

are not practicable, replacement tires shall be procured in accordance with the EPA guideline.

623.476-5 Preference program for paper and paper products containing recovered materials.

(a) All contracts requiring the purchase of paper and paper products shall require that paper and paper products delivered to the Department meet the EPA guideline for recycled paper.

(b) Contracting officers shall require contractors to use recycled paper when submitting reports and other deliverables to the Department, when feasible.

(c) Contracting officers shall require offerors/bidders to submit proposals/bids on recycled paper, double-sided copying to the maximum extent possible.

623.477 Promotion program.

Items composed of recovered materials shall be purchased under all new domestic contracts to the maximum extent practicable. Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-proposal and pre-bid conferences when appropriate.

623.478 Evaluation and certification.

(a) Contracting officers shall ensure that vendors estimate in their offers/bids the percentage of recovered material of the total content of designated items to be used under the contract.

(b) Contracting officers shall ensure that contractors certify the percentage of recovered materials contained in designated items actually supplied under the contract.

623.479 Annual review and monitoring.

The effectiveness of the preference program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered material is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices or an unacceptable level of performance.

623.480 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 652.223-70, Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract, in all domestic contracting activity solicitations using recovered materials in the performance of the work.

(b) The contracting officer shall insert the clause at 652.223-71, Certification of Minimum Content Actually Utilized in the Performance of the Contract, in all domestic solicitations and contracts requiring the use of recovered materials.

(c) The contracting officer shall insert the provision at 652.223-72, Use of Double-Sided Copying in the Submission of Bids or Proposals, in all domestic solicitations for supplies or services.

(d) The contracting officer shall insert the clause at 652.223-73, Use of Double-Sided Copying in the Submission of Reports, in all domestic solicitations and contracts for supplies or services.

(e) The contracting officer shall insert the clause at 652.233-74, Use of Fly Ash as a Partial Replacement for Cement and Concrete, in all domestic solicitations and contracts for Architect/Engineer services for the design of structures or works that will use cement and concrete products, unless the requirements office provides a written justification for using virgin materials.

(f) The contracting officer shall insert the clause at 652.223-75, Use of Recovered Materials in Building Insulation Products, in all domestic solicitations and contracts for Architect/Engineer services for the design of structures or works that will utilize or incorporate building insulation products containing recovered materials, unless the program office provides a written justification for using virgin materials.

(g) The contracting officer shall insert the clause at 652.223-76, Use of Lubricating Oils Containing Re-Refined Oils, in all domestic solicitations and contracts that require the delivery of lubricating oils, unless the program office provides a written justification for using virgin materials.

(h) The contracting officer shall insert the clause at 652.223-77, Use of Retread Tires, in all domestic solicitations and contracts that require the replacement of tires for automobiles, light and heavy trucks and trailers, and off-road vehicles, unless the program office provides a written justification for not using retread tires. This clause does not apply to the purchase of original equipment tires.

(i) The contracting officer shall insert the clause at 652.233-78, Use of Recovered Materials in Paper and Paper Products, in all domestic solicitations and contracts that require the delivery of reports or other paper products, unless the program office provides a written justification for the use of virgin materials.

Subpart 623.5—Drug-Free Workplace**623.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

The authority to approve the determination prescribed in FAR 23.506(e) is reserved to the Secretary of State.

[55 FR 5775, Feb. 16, 1990]

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 624.2—Freedom of Information Act**624.202 Policy.**

DOS regulations implementing the Freedom of Information Act (5 U.S.C. 552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171, Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

[53 FR 26172, July 11, 1988]

Department of State

625.302

PART 625—FOREIGN ACQUISITION

**Subpart 625.1—Buy American Act—
Supplies**

Sec.

625.102 Policy.

625.105 Evaluating offers.

625.108 Excepted articles, materials, and supplies.

**Subpart 625.2—Buy American Act—
Construction Materials**

625.202 Policy.

625.203 Evaluating offers.

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**Subpart 625.3—Balance of Payments
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625.300 Scope of subpart.

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625.302 Policy.

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Foreign Purchases**

625.703 Exceptions.

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Acquisition Clauses**

625.901 Omission of examination of records clause.

625.903 Conditions for omission.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26172, July 11, 1988, unless otherwise noted.

**Subpart 625.1—Buy American
Act—Supplies**

625.102 Policy.

(a)(3) The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity.

(b)(2) The authority to make the determination prescribed in FAR 25.102(b)(2) is delegated, without power of redelegation, to the head of the contracting activity.

[59 FR 66762, Dec. 28, 1994]

625.105 Evaluating offers.

The authority to make the determinations prescribed in FAR 25.105 is delegated, without power of redelega-

tion, to the head of the contracting activity.

625.108 Excepted articles, materials, and supplies.

A/OPE is the DOS central agency control point for furnishing to the appropriate FAR Council the documentation prescribed in FAR 15.108(b) and (c).

[53 FR 26172, July 11, 1988, as amended at 59 FR 66762, Dec. 28, 1994]

**Subpart 625.2—Buy American
Act—Construction Materials**

625.202 Policy.

(a)(2) The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity.

(b) The authority to make the determination prescribed in FAR 25.202(b) is delegated, without power of redelegation, to the head of the contracting activity.

[59 FR 66762, Dec. 28, 1994]

625.203 Evaluating offers.

The head of the contracting activity is the agency head for the purposes of FAR 25.203 (a) and (b).

[59 FR 66762, Dec. 28, 1994]

625.204 Violations.

The Procurement Executive is the agency head for the purposes of FAR 25.204.

**Subpart 625.3—Balance of
Payments Program**

625.300 Scope of subpart.

625.300-70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

625.302 Policy.

The authority to make the determination prescribed in FAR 25.302(b)(3) is delegated, without power of redelegation, to the head of the contracting activity. The authority prescribed in FAR 25.302(c) is delegated, without

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power of redelegation, to the head of the contracting activity.

625.304 Excess and near-excess foreign currencies.

The authority to make the determination prescribed in FAR 25.304(c) is delegated to the head of the contracting activity without power of redelegation.

[53 FR 26172, July 11, 1988, as amended at 59 FR 66762, Dec. 28, 1994]

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

The authority to approve exceptions for other contracts in excess of the simplified acquisition threshold is delegated, without power of redelegation, to the head of the contracting activity.

[60 FR 39663, Aug. 3, 1995]

Subpart 625.9—Additional Foreign Acquisition Clauses

625.901 Omission of examination of records clause.

(a) The Procurement Executive is the agency head for the purposes of FAR 25.901.

(b) Each determination and findings to omit FAR clause 52.215–1, Examination of Records by Comptroller General, shall be prepared in writing by the contracting officer and submitted to the Procurement Executive for approval.

(c) The Procurement Executive shall forward the approved determination and findings to the requesting contracting activity for inclusion in the contract file, or inform the contracting activity in writing if the determination and findings is not approved, as appropriate.

(1)(ii) The report required by FAR 25.901(c)(1)(ii) shall be prepared and forwarded to the Assistant Secretary of State for Administration by the Procurement Executive.

[59 FR 66762, Dec. 28, 1994]

625.903 Conditions for omission.

The Procurement Executive is the agency head for the purposes of FAR 25.903.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 627—PATENTS, DATA, AND COPYRIGHTS

Subpart 627.2—Patents

Sec.

627.203 Patent indemnification of Government by contractor.

627.203-6 Clause for Government waiver of indemnity.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

627.304 Procedures.

627.304-1 General.

627.304-5 Appeals.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

Subpart 627.2—Patents

627.203 Patent indemnification of Government by contractor.

627.203-6 Clause for Government waiver of indemnity.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.203-6.

Subpart 627.3—Patent Rights Under Government Contracts

627.303 Contract clauses.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.303. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304 Procedures.

627.304-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-1. Questions regarding fact-finding procedures as specified in FAR 27.304-1(a)(4) shall be referred to A/OPE. Determinations issued by the Procurement Executive shall be reviewed by the Office of the Legal Adviser.

627.304-5 Appeals.

The Procurement Executive is the agency head's designee for the purposes of FAR 27.304-5. Questions regarding the appeals procedure as specified in FAR 27.304-5(b) shall be referred to A/OPE.

PART 628—BONDS AND INSURANCE

Subpart 628.1—Bonds

Sec.

628.101 Bid guarantees.

628.101-1 Policy on use.

628.106-6 Furnishing information.

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

628.203-7 Exclusion of individual sureties.

Subpart 628.3—Insurance

628.305 Overseas workers' compensation and war-hazard insurance.

628.306 Insurance under fixed-price contracts.

628.307 Insurance under cost-reimbursement contracts.

628.307-70 Insurance under labor-hour and time-and-materials contracts.

Subpart 628-70—Indemnification

628.7001 DOSAR contract clause.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 628.1—Bonds

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

628.101 Bid guarantees.

628.101-1 Policy on use.

(c) The Procurement Executive is the agency head's designee for the purposes of FAR 28.101-1(c).

628.106-6 Furnishing information.

(c) The head of the contracting activity is the agency head's designee for the purposes of FAR 28.106-6(c).

Subpart 628.2—Sureties

628.203 Acceptability of individual surety.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the Office of the Inspector General.

[59 FR 66763, Dec. 28, 1994]

628.203-7 Exclusion of individual sureties.

The Procurement Executive is the agency head's designee for the purposes of FAR 28.203-7.

[59 FR 66763, Dec. 28, 1994]

Subpart 628.3—Insurance

SOURCE: 59 FR 66763, Dec. 28, 1994, unless otherwise noted.

628.305 Overseas workers' compensation and war-hazard insurance.

(a) It is the Department's policy that acquisitions for services, including construction but excluding personal services contracts, which require contractor personnel to perform work outside of the United States, shall include the contractual obligation for coverage under the Defense Base Act (42 U.S.C. Sections 1651-1654, as amended). For the purpose of this section only, "contractor personnel" includes individuals who are either:

(1) United States citizens or residents, or

(2) Hired in the United States or its possessions.

(b) The Department of State has entered into a contract with an insurance broker and carrier to provide Defense Base Act insurance, at a fixed rate for services and construction, to cover DOS contracts which will require performance overseas by United States citizens, residents, or those employed in the United States. In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries may be waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert:

(1) The clause at 652.228-71, Worker's Compensation Insurance (Defense Base Act)—Services;

(2) The clause at 652.228-72, Worker's Compensation Insurance (Defense Base Act)—Construction; and,

(3) The clause at 652.228-73, Waiver of Defense Base Act.

(c) Upon award of a contract which requires Defense Base Act insurance, the contracting officer shall notify the successful offeror of the name of the insurance broker from which the contractor should acquire insurance.

(d) The authority to request a waiver from the Secretary of Labor of a particular country, as set forth in FAR 28.305(d), is reserved to the Secretary of State. The Department has obtained blanket waivers from the Secretary of Labor for all contracts for services, including construction, awarded and/or performed overseas. The waivers apply to all individuals who are not employees hired in the United States, or who are not United States citizens or residents.

628.306 Insurance under fixed-price contracts.

(a) The contracting officer shall insert the provision at:

(1) 652.228-74, Defense Base Act Insurance Rates—Limitation—Services, in solicitations for fixed-price service contracts to be performed outside the United States by United States citizens or residents and/or those hired in the United States; or

(2) 652.228-75, Defense Base Act Insurance Rates—Limitation—Construction, in solicitations for fixed-price construction contracts to be performed outside the United States by United States citizens or residents and/or those hired in the United States.

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228-76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, in solicitations for cost-reimbursement type contracts to be performed outside the United States by United States citizens or residents and/or those hired in the United States.

628.307-70 Insurance under labor-hour and time-and-materials contracts.

The contracting officer shall insert the provision at 652.228-77, Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Material, in solicitations for labor-hour or time-and-material type contracts to be performed outside the United States by United States citizens or residents and/ or those hired in the United States.

Subpart 628-70—Indemnification**628.7001 DOSAR contract clause.**

(a) Contractors should not ordinarily be required to assume risks which a private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228-70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

PART 629—TAXES**Subpart 629.1—General**

Sec.

629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202-70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401-70 DOSAR contract clause.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 629.1—General**629.101 Resolving tax problems.**

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

Subpart 629.2—Federal Excise Taxes**629.202 General exemptions.****629.202-70 Exemptions from other Federal taxes.**

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

Subpart 629.3—State and Local Taxes**629.302 Application of State and local taxes to the Government.**

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

629.303 Application of State and local taxes to Government contractors and subcontractors.

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

Subpart 629.4—Contract Clauses**629.401 Domestic contracts.****629.401-70 DOSAR contract clause.**

The contracting officer shall insert the clause at 652.229-71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

PART 630—COST ACCOUNTING STANDARDS

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 630.3—CAS Program Requirements**630.201-5 Waiver.**

The Procurement Executive is the agency head's designee for the purposes of FAR 30.201-5(c).

[53 FR 26173, July 11, 1988]

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 631.1—Applicability**631.101 Objectives.**

The Procurement Executive is the agency head's designee for the purposes of FAR 31.101.

[59 FR 66764, Dec. 28, 1994]

PART 632—CONTRACT FINANCING**Subpart 632.4—Advance Payments**

Sec.

632.402 General.

632.407 Interest.

Subpart 632.7—Contract Funding

632.703 Contract funding requirements.

632.703-3 Contracts crossing fiscal years.

Subpart 632.8—Assignment of Claims

632.803 Policies.

Subpart 632.9—Prompt Payment

632.903 Policy.

632.908 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 632.4—Advance Payments**632.402 General.**

(b) Advance payments shall be authorized sparingly. Contracting officers should consider the use of partial payments, fast payments, or more frequent payments as alternatives to advance payments.

(c)(1)(iii) The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

632.407 Interest.

(d) The Procurement Executive is the agency head's designee for the purposes of FAR 32.407(d).

[59 FR 66764, Dec. 28, 1994]

Subpart 632.7—Contract Funding**632.703 Contract funding requirements.****632.703-3 Contracts crossing fiscal years.**

(a) The State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2696(e)), allows funds from annual appropriations to extend beyond the fiscal year in which the acquisition was funded. This authority may be used for acquisitions of supplies or services, regardless of dollar amount or contract type. Use of this authority requires that:

(1) The acquisition normally would be considered severable (i.e., the services are repetitive and can be started

or stopped any time; would normally be funded and performed within a fiscal year; and are not services integral to the creation of an end product. An example is janitorial services);

(2) The base performance period is twelve months, begins in the current fiscal year, and crosses into the next fiscal year; and,

(3) Full funding for twelve months is available in the current year.

(b) If the acquisition involves more than one source of funds, the contract shall be priced to identify the source of funds (by allotment) with the relevant portion of the total supplies or services. For current Department contracts, bilateral modifications are authorized where necessary to convert to a performance period that crosses fiscal years, as long as the requisite funding is available as described in paragraph (a), and provided that the total contract length does not increase.

(c) Use of this authority shall be documented in the contract file and be included as part of the Advance Acquisition Plan and Price Negotiation Memorandum. If neither document is relevant to the acquisition, the contracting officer shall prepare a written document to the file indicating compliance with this subsection.

(d) For acquisitions conducted by overseas posts that are funded by another agency, the contracting officer shall ensure that funding for the full twelve-month period is available at time of award if the authority in 22 U.S.C. 2696(e) will be used.

[59 FR 66764, Dec. 28, 1994]

Subpart 632.8—Assignment of Claims

632.803 Policies.

(b) The assignment of claims shall be prohibited for all personal services contracts. The assignment of claims shall also be prohibited for all contracts awarded and performed overseas, unless approval is received from the Procurement Executive.

[59 FR 66764, Dec. 28, 1994]

Subpart 632.9—Prompt Payment

632.903 Policy.

The authority to make the determination prescribed in FAR 32.903 is delegated, without power of redelegation, to the head of the contracting activity. Before making a determination concerning early invoice and contract financing payments, the head of the contracting activity shall consult with the Office of Fiscal Operations director, or designee.

[55 FR 5775, Feb. 16, 1990]

632.908 Contract clauses.

(a) The contracting officer may insert a clause substantially the same as the clause at 652.232-70, Payment Schedule and Invoice Submission (Fixed-Price), in fixed-price type solicitations and contracts.

(b) The contracting officer may insert a clause substantially the same as the clause at 652.232-71, Voucher Submission (cost-Reimbursement), in cost-reimbursement type solicitations and contracts.

[59 FR 66764, Dec. 28, 1994]

PART 633—PROTESTS, DISPUTES, AND APPEALS

Subpart 633.1—Protests

Sec.

633.102 General.

633.103 Protests to the agency.

633.104 Protests to GAO.

633.105 Protests to GSBICA.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

633.211 Contracting officer's decision.

633.214-70 Alternative dispute resolution.

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270-1 Scope of section.

633.270-2 Designation.

633.270-3 DOS support.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated with the Office of the Legal Adviser.

633.103 Protests to the agency.

For protests filed with the Department and received before award, the contracting office shall obtain the advice of the Office of the Legal Adviser before making the determination prescribed in FAR 33.103(a).

633.104 Protests to GAO.

(a) *General.* (1) Upon being telephonically advised by the GAO of the receipt of a protest, before or after award, the Office of the Legal Adviser shall inform the appropriate head of the contracting activity, who shall immediately notify the contracting officer. For protests concerning ADP acquisitions, the Office of the Legal Adviser shall also inform the Deputy Assistant Secretary for Information Management. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Legal Adviser shall promptly provide the same to the head of the contracting activity involved, who shall promptly provide a copy to the contracting officer and request a written report in conformance with FAR 33.104(a)(2).

(2) In addition to the requirements in FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, and shall be prepared and signed by the contracting officer. The contracting officer shall prepare the report with the assistance of the Office of the Legal Adviser. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, the report shall include an estimate of the length of time an award may be delayed without significant expense or difficulty in perform-

ance. The head of the contracting activity shall submit to the Office of the Legal Adviser an original and two complete copies of the contracting officer's report. The contracting officer shall provide one complete copy to each interested party who responded to GAO, to the contracting officer, or to the Office of the Legal Adviser pursuant to the notification prescribed in paragraph (a)(3) below. In submitting the report to GAO, the Office of the Legal Adviser shall identify all parties to whom the report has been furnished.

(3) As prescribed in FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. The contracting officer shall place a written record of such notifications in the contract file. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. The contracting officer shall send copies of such cover letters concurrently to the Office of the Legal Adviser. Cover letters shall contain a specified period of time for submission of comments, in accordance with FAR 33.104(a)(3), and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Office of the Legal Adviser. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(4) All DOS personnel shall handle protests on a priority basis. If the specific circumstances of the protest require a longer period than allowed under FAR 33.104(a)(3), the head of the contracting activity shall immediately notify the Office of the Legal Adviser, which shall prepare a written request for extension of the period in accordance with 4 CFR 21.3(d). The head of the contracting activity shall deliver the protest report to the Office of the Legal Adviser within 15 work days from the date of telephonic notification by the Office of the Legal Adviser.

For reports involving use of the 10 work day express option provided at FAR 33.104(a)(4), the Office of the Legal Adviser shall establish the report delivery date after consultation with the head of the contracting activity.

(b) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances prescribed in FAR 33.104(b)(1), the contracting officer shall first obtain advice from the Office of the legal Adviser. The contracting officer shall submit the written determination to the head of the contracting activity for approval.

(f) *Notice to GAO.* The authority to submit the report prescribed in FAR 33.104(f) is delegated, without power of redelegation, to the head of the contracting activity. The report shall be submitted to the Comptroller General through the Office of the Legal Adviser.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

633.105 Protests to GSBCA.

(a) Upon receipt of a copy of a protest to GSBCA, the contracting officer or the official designated in the solicitation shall immediately notify the Office of the Legal Adviser and the Deputy Assistant Secretary for Information Management. The contracting officer is responsible for compliance with the requirements in FAR 33.105(a)(2). The contracting officer shall include in the contract file a record of such notifications to all parties and related correspondence with GSBCA. The contracting officer shall provide to the Office of the Legal Adviser a copy of the list of interested parties notified, simultaneously with submission of the list to the GSBCA.

(b) The contracting officer shall submit to the Office of the Legal Adviser an original and two copies of the protest file, documented in conformance with FAR 33.105(b), within 8 work days after the filing of a protest. The contracting officer also shall provide a complete copy of the file to the protester and all other interested parties within 10 work days after filing of the protest. The protest file shall be orga-

nized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR Ch. 61). The Office of the Legal Adviser shall then submit the file to the GSBCA within 10 work days after filing of the protest.

(c) The Office of the Legal Adviser shall represent the contracting officer at any hearing on suspension of the agency's delegation of procurement authority or at any hearing on the merits of the protest. The Office of the Legal Adviser shall notify the contracting officer and the Deputy Assistant Secretary for Information Management of the results of any hearing.

(d) The authority to execute the determination and findings (D&F) prescribed in FAR 33.105(d)(2) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.211 Contracting officer's decision.

(a) In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "the Board of Contract Appeals" with "Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, VA 22041."

(b) Prior to issuing a contracting officer's final decision, the contracting officer shall obtain assistance, as appropriate, from the Office of the Legal Adviser.

633.214-70 Alternative dispute resolution.

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

(b) *When to use ADR.* (1) *Factors favoring ADR.* Contracting officers should consider using ADR in those cases where:

- (i) Only facts are in dispute;
- (ii) The facts are clearly not favorable to the Government;
- (iii) The anticipated costs (in time and money) are less than the anticipated costs of litigation;
- (iv) Settlement attempts have reached an impasse;
- (v) ADR techniques have been used successfully in similar situations;
- (vi) There is a need for independent expert analysis; or,
- (vii) The claim has merit but its value is overstated.

(2) *Factors disfavoring ADR.* The following circumstances do not favor use of ADR:

- (i) Cases involving disputes controlled by clear legal precedent, making compromise difficult;
- (ii) The resolution will have a significant impact on other pending cases or on the future conduct of Department business;
- (iii) The dispute is primarily over issues of law;
- (iv) A decision of precedential value is needed;
- (v) A significant policy question is involved;
- (vi) A full public record of the proceeding is important;
- (vii) The outcome could significantly involve persons who are not parties to the contract;
- (viii) The costs of pursuing an ADR procedure (in time and money) exceed the cost of litigation;
- (ix) The nature of the case may cause ADR to be used merely for delay or discovery; or,
- (x) The case involves criminal violations.

(3) *Initial action.* Immediately upon receipt of a claim, the contracting officer shall send a letter acknowledging receipt of the claim and soliciting the contractor's views on submitting this claim for ADR. In every dispute, the first step toward resolution shall be unassisted negotiations, in which the parties try to work out the disagreement among themselves. If this fails, before issuing a final decision, the contracting officer shall consult first with

the head of the contracting activity, and contact the Office of the Legal Adviser and A/OPE to determine whether the disagreement appears susceptible to resolution by ADR. Consideration shall be given to pursuing additional fact-finding or designating a neutral expert in the disputed issue to provide an advisory opinion.

(c) *Methods of ADR.* If the initial action to resolve the dispute fails, and the contracting officer issues a final decision which is appealed, ADR may still be feasible. The ASBCA issues a notice regarding ADR to all contractors who file appeals under the Contract Disputes Act. This notice describes the following ADR techniques, which contracting officers are urged to discuss with contractors at any time:

(1) *Settlement judge.* A settlement judge is either an administrative judge or hearing examiner who is appointed by the parties in dispute for the purpose of facilitating settlement. The agenda is flexible and based on the specifics of the individual dispute. By holding a frank, in-depth discussion of the strengths and weaknesses of each party's position, the settlement judge may be able to foster a settlement of the dispute. The settlement judge may meet with the parties jointly or individually, and the settlement judge's recommendations are not binding. Typically, the settlement judge's opinions, based on his or her experience in handling prior disputes, will help the parties realize whether their arguments have merit or not.

(2) *Minitrial.* A minitrial is not an actual trial but rather a flexible, expedited, but structured procedure in which each party presents an abbreviated version of its position both to a neutral advisor (who may be appointed by the ASBCA) and to principals of the parties who have full contractual authority to conclude a settlement. The parties mutually decide on the form of presentation without regard to traditional judicial proceedings or rules of evidence. An advance agreement by the parties specifies the procedure to be followed in making presentations, as well as the role of the neutral advisor. Upon conclusion of the presentations, settlement negotiations are conducted.

The neutral advisor may assist the parties in negotiating settlement, including making non-binding recommendations.

(3) *Summary trial with binding decision.* A summary trial with binding decision is a procedure in which the scheduling of an appeal is expedited and the parties try their appeal informally before an administrative judge or panel of judges. The length of the trial and the time for presentation and decision are tailored to the needs of the particular case. Trial procedures and rules applicable to appeals are modified or eliminated to expedite resolution of the appeal. The parties must agree, however, that all decisions, rulings, and orders by the judge(s) are final, conclusive, and not appealable, and may not be set aside, except for fraud. A summary "bench" decision is issued at the conclusion of the trial or a summary written decision will be issued within ten (10) days of either the trial's conclusion or receipt of a trial transcript.

(4) *Mediation.* Mediation is a process in which a neutral and impartial third party assists the Government and the contractor in conflict to negotiate an acceptable settlement of contested issues. The mediator is jointly selected and is asked by the disputing parties to assist them to reach a voluntary agreement. The mediator has no decision-making authority and cannot impose a decision. Mediation assistance involves working with the parties to improve their communications, clarify or interpret data, identify key issues to be discussed, design an effective negotiation process, generate settlement options, or help to identify or formulate areas of agreement. Additional information is available in Army Corps of Engineers IWR Pamphlet 91-ADR-P-3, *Mediation*, September 1991; and Administrative Conference of the U.S., *Mediation: A Primer for Federal Agencies*, available from A/OPE.

(5) *Arbitration.* Non-binding arbitration is a process in which a dispute is jointly submitted by the Government and a contractor to an impartial and neutral person or panel who provides a written, non-binding opinion used as a guide for negotiations toward a settlement. Although the Administrative Dispute Resolution Act of 1990 (Pub. L.

101-552) allows agencies to use binding arbitration, the law provides that the agency head may vacate any arbitration award within 30 days after it is served on all parties. For this reason, non-binding arbitration is preferable. Additional information is available in Army Corps of Engineers IWR Pamphlet 91-ADR-P-2, *Non-Binding Arbitration*, September 1990, available from A/OPE.

(6) *Partnering.* Partnering involves an agreement in principle to share the risks involved in completing a project, and to establish and promote a partnership environment. Partnering itself is not a contractual agreement and it does not create any legally enforceable rights, but instead partnering seeks to create a new cooperative attitude in completing Government contracts. The three basic steps in partnering are:

(i) Establish the new relationship through personal contact among the principals for the Government and the contractor before the work begins;

(ii) Prepare a joint statement of goals establishing common objectives in specific detail for reaching the goals; and,

(iii) Identify specific dispute prevention processes designed to head off problems, evaluate performance, and promote cooperation. Additional information is available in Army Corps of Engineers IWR Pamphlet 91-ADR-P-4, *Partnering*, December 1991, available from A/OPE.

(d) *ADR procedures.* The ADR method shall be selected voluntarily by both the Government and the contractor. Both parties shall agree on the procedures to be followed, including the agenda and amount of time allowed for each party to present its case. The parties may choose not to have a written transcript or hearing on the record, as this might inhibit settlement. Also, the decision rendered, if any, should not be considered to establish any precedent for future litigation unless the parties agree otherwise. In cases where the parties agree to pay jointly for a third-party neutral advisor, it is recommended that the parties and the advisor agree on a fair and reasonable price. The Government would then issue a simplified acquisition (if the

633.270

dollar amount does not exceed the simplified acquisition limitation) for 50% of the agreed price, and the advisor would submit separate invoices (each for 50% of the price) to the Government and the contractor.

[59 FR 66764, Dec. 28, 1994]

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270-1 Scope of section.

This section concerns disputes relating to DOS contracts and the transfer of certain appellate and review functions from the Department of State to the Armed Services Board of Contract Appeals.

633.270-2 Designation.

The Armed Services Board of Contract Appeals (ASBCA) is the author-

48 CFR Ch. 6 (10-1-97 Edition)

ized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes relating to DOS contracts subject to the Contract Disputes Act of 1978. The ASBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues relating to DOS contracts subject to the Contract Disputes Act of 1978.

633.270-3 DOS support.

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the ASBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

Sec.

- 634.001 Definitions.
- 634.001-70 Supplemental definitions.
- 634.002 Policy.
- 634.003 Responsibilities.
- 634.005 General requirements.
- 634.005-6 Full production.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

634.001 Definitions.

Major system:

(a) The definition of “major system” in OMB Circular No. A-109, Major System Acquisitions (A-109), provides no exclusions; however, FAR 34.001 excludes from the definition of “major system” construction or other improvements to real property. Acquisition of capital project systems by the Office of Foreign Buildings, which would otherwise be subject to the requirements of A-109 are thus exempted from these requirements. Under separate authority, the DOS has other existing controls that provide the necessary review, approval, and monitoring procedures to manage capital project systems acquisitions by the Office of Foreign Buildings.

(b) Pursuant to A-109 and paragraph (b) of the definition of “major system” prescribed in FAR 34.001, any DOS system shall be considered a major system if total acquisition costs with private industry are expected to equal or exceed \$30,000,000.

(c) The acquisition executive is the Under Secretary for Management for the purposes of paragraph (c) of the definition of “major system” prescribed in FAR 34.001. The acquisition executive is authorized to designate as a major system acquisition any DOS system not expected to meet or exceed the \$30,000,000 threshold identified in paragraph (b) above; provided, that the determination shall be made in accordance with the requirements of A-109, FAR Part 34, and this part 634.

(d) Classification as a major system acquisition is independent of the num-

ber of component DOS contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or it may involve more than one DOS contracting activity.

(e) Each major system acquisition shall be in response to a need of one of the DOS major missions, which are identified in volume 1 of the Foreign Affairs Manual System.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994]

634.001-70 Supplemental definitions.

Section five of A-109 defines several terms in addition to those defined in FAR 34.001.

Major Acquisition Program Office (A/IM/MAPO) is located within the Office of Information Management. It has managerial and operational responsibilities relative to all major information resource acquisitions.

[53 FR 26175, July 11, 1988; 53 FR 36462, Sept. 20, 1988, as amended at 59 FR 66766, Dec. 28, 1994]

634.002 Policy.

The objective of A-109 is to assure effectiveness and efficiency in acquiring major systems. Section six of A-109 provides general policy guidelines in addition to those prescribed in FAR 34.002.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 34.003(a). Written procedures for acquiring Federal Information Processing (FIP) resources by A/IM/MAPO are contained in the “Source Selection Procedures Guide”, issued by that Office.

(b) The Under Secretary for Management is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A-109.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994]

634.005

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634.005 General requirements.

Subpart 636.6—Architect-Engineer Services

634.005-6 Full production.

The Deputy Secretary is the agency head for the purposes of FAR 34.005-6.

[59 FR 66766, Dec. 28, 1994]

636.602 Selection of firms for architect-engineer contracts.

636.602-4 Selection authority.

(a) The final selection decision shall be made as designated by the Deputy Assistant Secretary for Foreign Buildings Operations for acquisitions issued by that office; the Director, Moscow Embassy Buildings Control Office, for Moscow chancery building(s) only; and, the appropriate head of the contracting activity for all other actions.

[59 FR 66766, Dec. 28, 1994]

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.1—General

Sec.

636.101 Applicability.

636.101-70 Exception.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

636.602-4 Selection authority.

636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26175, July 11, 1988, unless otherwise noted.

Subpart 636.1—General

636.101 Applicability.

636.101-70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, may be exempted from the provisions of the FAR (48 CFR Ch. 1) under the authority of the Foreign Service Buildings Act, 1926, as amended, 22 U.S.C. 292 *et seq.*, as further codified at section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code.

[53 FR 26175, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994]

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

636.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.

The short selection process described in FAR 36.602-5 is authorized for use for contracts not expected to exceed the simplified acquisition threshold.

[59 FR 66766, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

Sec.

637.103 Contracting officer responsibility.

637.104 Personal services contracts.

637.104-70 DOS personal services contracts.

637.106 Funding and term of service contracts.

637.110 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104-70 DOS personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau of Population, Refugees, and Migration, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics and Law Enforcement Affairs, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Office of Foreign Buildings and the Moscow Embassy Control Office, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e); and

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994; 60 FR 39663, Aug. 3, 1995]

637.106 Funding and term of service contracts.

The Department's statutory authority for authorizing contracts for serv-

ices funded by annual appropriations to be performed in two fiscal years, if the total amount for such contracts is obligated in the earlier fiscal year, is 22 U.S.C. 2696(e). See DOSAR 632.703-3.

[59 FR 66766, Dec. 28, 1994]

637.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 652.237-70, Compensatory Time Off, in personal services contracts awarded in support of International Narcotics Control programs overseas, if the contracting officer determines its use appropriate.

(b) The contracting officer shall insert the clause at 652.237-71, Identification/Building Pass, in all solicitations and contracts where contractor personnel require frequent and continuing access to Department of State facilities.

(c) The contracting officer shall insert a clause substantially the same as the clause at 652.237-72, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any Department of State facility.

[59 FR 66766, Dec. 28, 1994]

PART 639—ACQUISITION OF INFORMATION RESOURCES

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

639.001-70 Policy.

(a) The Assistant Secretary of State for Administration is the Department's Designated Senior Official as defined in the Federal Information Resources Management Regulation (FIRMR) 201-39.201.

[59 FR 66766, Dec. 28, 1994]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

Subpart 642.2—Assignment of Contract Administration

Sec.
642.270 Contracting Officer's Representative (COR).
642.271 DOSAR contract clause.

Subpart 642.6—Corporate Administrative Contracting Officer

642.602 Assignment and location.

Subpart 642.14—Traffic and Transportation Management

642.1406-2 Contract clause.
642.1406-2 -70 DOSAR contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 642.2—Assignment of Contract Administration

642.270 Contracting Officer's Representative (COR).

(a) *Scope.* Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. This section is mandatory for domestic contracting activities and recommended for overseas contracting activities.

(b) *Policy.* It is Department policy that only Department of State employees who have completed adequate training and have the necessary experience and judgment shall be appointed as CORs. This policy shall be reinforced by contracting officers and administered jointly by A/OPE and FSI. Required training shall be funded by the COR's office.

[59 FR 66766, Dec. 28, 1994]

642.271 DOSAR contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 652.242-70, Contracting Officer's Representative, in solicitations and contracts when appointment of a

contracting officer's representative is anticipated.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66766, Dec. 28, 1994]

Subpart 642.6—Corporate Administrative Contracting Officer

642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

Subpart 642.14—Traffic and Transportation Management

642.1406-2 Contract clause.

642.1406-2-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.242-71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242-72, Shipping Instructions, in solicitations and contracts with a source in the United States and overseas shipment of supplies is required.

PART 643—CONTRACT MODIFICATIONS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 643.1—General

643.102 Policy.

643.102-70 Contract compliance and review.

(a) When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

(b) Subpart 604.70 prescribes the review requirements for modifying contracts for supplies and services, including construction. The contracting officer shall submit such contract modifications to A/OPE when:

(i) The modification itself exceeds the thresholds established in 604.7002(a);

(ii) The modification will cause the contract to exceed the thresholds established in 604.7002(a); or,

(iii) Any proposed change under the modification results in an increase or decrease exceeding the thresholds in 604.7002(a) in any of the individual cost elements of the existing contract.

[53 FR 26176, July 11, 1988, as amended at 59 FR 66767, Dec. 28, 1994]

PART 645—GOVERNMENT PROPERTY

Subpart 645.3—Providing Government Property to Contractors

Sec.

645.302 Providing facilities.

645.302-1 Policy.

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.

645.302-1 Policy.

The authority to make the determination prescribed in FAR 45.302-1(a)(4) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

The Procurement Executive is the agency head's designee for the purposes of FAR 45.608-6.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610-2(a).

PART 646—QUALITY ASSURANCE

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 646.7—Warranties

646.710 Contract clauses.

646.710-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.246-70, Commercial Warranty, in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

[53 FR 26177, July 11, 1988]

PART 647—TRANSPORTATION

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

647.000 Scope of part.

The FAR and DOSAR do not apply to the acquisition of transportation services via Government bill of lading (GBL) or other similar forms.

[59 FR 66767, Dec. 28, 1994]

PART 648—VALUE ENGINEERING

AUTHORITY: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 648.1—Policies and Procedures

648.102 Policies.

(a) The authority to grant exemptions prescribed in FAR 48.102(a), or to extend future contract savings or sharing pursuant to FAR 48.102(g), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70).

[55 FR 5775, Feb. 16, 1990]

Subpart 648.2—Contract Clauses

648.201 Clauses for supply or service contracts.

The authority to determine exemptions prescribed in FAR 48.201(a)(6) is delegated, without power of redelegation, to the head of the contracting activity.

[55 FR 5775, Feb. 16, 1990]

PART 649—TERMINATION OF CONTRACTS

AUTHORITY: 40 U.S.C. 485(c); 22 U.S.C. 2658.

Subpart 649.1—General Principles.

649.106 Fraud or other criminal conduct.

If the Termination Contracting Officer (TCO) suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts to the Office of the Inspector General.

[59 FR 66767, Dec. 28, 1994]

649.111 Review of proposed settlements.

All proposed termination settlements shall be reviewed and approved by the

Office of the Legal Adviser for legal sufficiency. In addition,

(a) All proposed termination settlements from domestic contracting activities shall be approved by the head of the contracting activity; and,

(b) All proposed termination settlements from overseas contracting activities shall be approved by the Procurement Executive.

[59 FR 66767, Dec. 28, 1994]

PART 651—USE OF GOVERNMENT SOURCES BY CONTRACTORS

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 651.70—Contractor Use of Travel Advances, Official Travel Orders, and Government Travel Requisitions

651.701 Policy.

(a) It is the Department's policy that contractors shall not:

(1) Receive travel advances from the Department for contract-related travel;

(2) Travel under official travel orders; or,

(3) Receive Government Travel Requisitions (GTRs) for transportation.

(b) All contract-related travel shall be performed on the contractor's account with reimbursement provided after submission of a proper voucher.

(c) This policy does not apply to personal services contractor; *provided*, that such contractors are paid through the Department's payroll system and they are subject to the standard payroll deductions of Federal Withholding Tax and FICA. It also does not apply to contracts awarded by the Office of Language Services (A/OPR/LS).

[59 FR 66767, Dec. 28, 1994]

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

652.203-70 Prohibition Against the Use of Federal Employees.

652.203-71 Certification Regarding Federal Employment.

652.204-70 Security Requirements.

652.204-71 Security Requirements—Personnel.

652.206-70 Competition Advocacy/Ombudsman.

652.214-70 Notices.

652.214-71 Authorization to Perform.

652.216-70 Ordering—Indefinite-Delivery Contract.

652.216-71 Price Adjustment.

652.219-70 Department of State Subcontracting Goals.

652.223-70 Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract.

652.223-71 Certification of Minimum Content Actually Utilized in the Performance of the Contract.

652.223-72 Use of Double-Sided Copying in the Submissions of Bids or Proposals.

652.223-73 Use of Double-Sided Copying in the Submission of Reports.

652.223-74 Use of Fly Ash as a Partial Replacement for Cement and Concrete.

652.223-75 Use of Recovered Materials in Building Insulation Products.

652.223-76 Use of Lubricating Oils Containing Re-Refined Oils.

652.223-77 Use of Retread Tires.

652.223-78 Use of Recovered Materials in Paper and Paper Products.

652.228-70 Indemnification.

652.228-71 Worker's Compensation Insurance (Defense Base Act)—Services.

652.228-72 Worker's Compensation Insurance (Defense Base Act)—Construction.

652.228-73 Waiver of the Defense Base Act.

652.228-74 Defense Base Act Insurance Rates—Limitation—Services.

652.228-75 Defense Base Act Insurance Rates—Limitation—Construction.

652.228-76 Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement.

652.228-77 Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Materials.

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

652.232-70 Payment Schedule and Invoice Submission (Fixed-Price).

652.232-71 Voucher Submission (Cost-Reimbursement).

652.237-70 Compensatory time off.

652.237-71 Identification/Building Pass.

652.237-72 Observance of Legal Holidays and Administrative Leave.

652.242-70 Contracting Officer's Representative (COR).

652.242-71 Notice of Shipments.

652.242-72 Shipping Instructions.

652.246-70 Commercial Warranty.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26177, July 11, 1988, unless otherwise noted.

652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

652.102 Incorporating provisions and clauses.**652.102-1 Incorporation by reference.**

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

Subpart 652.2—Texts of Provisions and Clauses**652.200 Scope of subpart.**

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

652.203-70 Prohibition Against the Use of Federal Employees.

As prescribed in 603.670, insert the following clause:

PROHIBITION AGAINST THE USE OF FEDERAL
EMPLOYEES (DEC 1994)

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to Federal employees or a business concern or other organization owned or substantially owned or controlled by one or more Federal employees. For the purposes of this contract, this prohibition against the use of Federal employees includes any work performed by the contractor or any of its employees, subcontractors, or consultants.

(End of clause)

[59 FR 66767, Dec. 28, 1994]

652.203-71 Certification Regarding Federal Employment.

As prescribed in 603.670, insert the following provision:

CERTIFICATION REGARDING FEDERAL
EMPLOYMENT (DEC 1994)

By submitting an offer, the offeror hereby certifies that it is not owned or substantially owned or controlled by one or more Federal employees.

(End of provision)

[59 FR 66767, Dec. 28, 1994]

652.204-70 Security Requirements.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or administratively controlled

information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

SECURITY REQUIREMENTS (JULY 1988)

(a) This clause applies to the extent that this contract involves information the Government has determined to be classified ("Confidential," "Secret," or "Top Secret," hereinafter referred to as "classified") or administratively controlled ("Limited Official Use," hereinafter referred to as "administratively controlled").

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with paragraph (d) below and shall not supply, disclose, or otherwise permit any unauthorized person access to classified or administratively controlled information; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information, except with the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any non-U.S. citizen access to classified or administratively controlled information. The Contractor shall not permit any individual access to classified information without the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storage, and destroying official materials in accordance with the Uniform Regulations (Foreign Affairs Manual, Volume 5, Chapter 900, "Policy and Procedural Security"). The Contracting Officer, Post Security Officer, or Regional Security Officer shall provide a copy of this document to the Contractor. The Contracting Officer shall provide any supplements to these regulations to the Contractor in writing.

(e) The Contractor agrees to submit immediately to the Contracting Officer, Post Security Officer, a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

Department of State

652.216-70

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation the degree of importance to the national security of information to be furnished by the Contractor to the Government or by the Government to the Contractor. The Government shall give written notice to the Contractor of such security classification or administratively controlled designation and of any subsequent changes thereof. The Contractor shall rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of this contract that it has surrendered or disposed of all classified or administratively controlled information in its custody in accordance with applicable security regulations or instructions.

(End of clause)

652.204-71 Security Requirements—Personnel.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States.

SECURITY REQUIREMENTS—PERSONNEL (JULY 1988)

The Contractor agrees, if directed by the Contracting Officer, to furnish the Government with the name, date and place of birth, current address, and such other biographical information as is readily available to the Contractor, concerning any individual before permitting said individual to perform under this contract. The Contractor further agrees to permit only those individuals approved by the Government to be used in the performance of this contract.

(End of clause)

652.206-70 Competition Advocacy/Ombudsman.

As prescribed in 606.570, insert the following provision:

COMPETITION ADVOCACY/OMBUDSMAN (DEC 1994)

The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and contracting practices, potential offerors are encouraged to first contact the contracting of-

fice for the respective solicitation identified elsewhere in this solicitation. If concerns are not adequately addressed, contact the Department of State Competition Advocate on (703) 516-1680, or write to: U.S. Department of State, Competition Advocate, Office of the Procurement Executive, A/OPE/CA, Suite 603, SA-6, Washington, DC 20522-0602.

(End of provision)

[59 FR 66767, Dec. 28, 1994]

652.214-70 Notices.

As prescribed in 614.201-7-70(b), insert the following clause in solicitations and contracts entered into and performed outside the United States.

NOTICES (DEC 1994)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the Contracting Officer.

(End of clause)

[53 FR 26177, July 11, 1988. Redesignated and amended at 59 FR 66767, Dec. 28, 1994]

652.214-71 Authorization to Perform.

As prescribed in 614.201-7-70(c), insert the following provisions:

AUTHORIZATION TO PERFORM (DEC 1994)

The Contractor warrants that (a) it has obtained authorization to operate and do business in the country or countries in which this contract will be performed; (b) it has obtained all necessary licenses and permits required to perform this contract; and (c) it shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(End of provision)

[53 FR 26177, July 11, 1988. Redesignated and amended at 59 FR 66767, Dec. 28, 1994]

652.216-70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.505-70, insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

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ORDERING—INDEFINITE-DELIVERY CONTRACTS
(DEC 1994)

The Government shall use one of the following forms to issue orders under this contract:

(a) The Optional Form 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation; or,

(b) The Optional Form 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet.

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66768, Dec. 28, 1994]

652.216-71 Price Adjustment.

As prescribed in 616.203-4, insert a clause substantially the same as follows:

PRICE ADJUSTMENT (DEC 1994)

(a) The contract cost may be adjusted based on increases or decreases in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the *[insert name of country]* Government.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred subsequent to the award date of the contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the direct cost of direct service labor under the contract.

(c) The contractor shall present documentation that clearly supports any request for adjustment, including the calculation of the amount of adjustment requested. This documentation must identify and provide the appropriate portions of the text of the particular law from which the request is derived.

(d) Any request for adjustment shall be certified by signature by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(e) No adjustment shall be made to the contract price that relates to any overhead, fixed costs, profit or fee for the contractor. Only the amount charged to direct service labor cost shall be considered by the Government as basis for contract price adjustments.

(f) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment under this contract has been made.

(g) This clause shall only apply to laws enacted by the *[insert name of country]* Govern-

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ment meeting the criteria set forth above in paragraph (a). No adjustments shall be made due to currency devaluations fluctuations in exchange rates.

(End of clause)

[59 FR 66768, Dec. 28, 1994]

652.219-70 Department of State Subcontracting Goals.

As prescribed in 619.708-70, insert a provision substantially the same as follows:

DEPARTMENT OF STATE SUBCONTRACTING
GOALS (DEC 1994)

(a) The offeror shall provide a Small, Small Disadvantaged and Woman-Owned Enterprise Subcontracting Plan that details its approach to selecting and using Small, Small Disadvantaged, and Woman-Owned Business Enterprises as requested by the contracting officer.

(b) For the fiscal year *[insert appropriate fiscal year]*, the Department's subcontracting goals are as follows:

(1) Goal for subcontracting to SB:

(2) Goal for subcontracting to SDB:

(3) Goal for subcontracting to SWB:

(4) Omnibus goals (if applicable):

(i) 10% to minority business

(ii) 10% to small business

(End of provision)

[59 FR 66768, Dec. 28, 1994]

652.223-70 Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract.

As prescribed in 623.480(a), insert the following provision:

ESTIMATES OF THE TOTAL PERCENTAGE OF RECOVERED MATERIALS TO BE UTILIZED IN THE PERFORMANCE OF THE CONTRACT (DEC 1994)

(a) As required under Section 6002 of the Resource Conservation and Recovery Act, an officer or employee of the offeror shall estimate the total percentage of recovered material to be utilized in the performance of the contract.

(b) I, *(insert name of certifier)* am an officer employee responsible for the preparation of this offer and hereby estimate the total percentage of recovered material to be utilized in the performance of the contract as follows:

Product	Estimate of total percent of recovered material to be utilized

(End of provision)

[59 FR 66768, Dec. 28, 1994]

652.223-71 Certification of Minimum Content Actually Utilized in the Performance of the Contract.

As prescribed in 623.480(b), insert the following clause:

CERTIFICATION OF MINIMUM CONTENT ACTUALLY UTILIZED IN THE PERFORMANCE OF THE CONTRACT (DEC 1994)

(a) As required under Section 6002 of the Resource Conservation and Recovery Act, an officer or employee of the contractor shall execute the following certification:

I, (insert name of certifier) am an officer or employee responsible for the performance of this contract and hereby certify the following minimum recovered material content was actually utilized in the performance of this contract:

Product	Percent of minimum recovered material actually utilized

(b) The contractor shall submit this certification by January 31 in each year during the period of performance of this contract. The period of the certification shall cover the preceding calendar year.

Signature of the officer or employee

Typed name of officer or employee

Title

Name of company, firm, or organization

Date

(End of clause)

[59 FR 66768, Dec. 28, 1994]

652.223-72 Use of Double-Sided Copying in the Submissions of Bids or Proposals.

As prescribed in 623.480(c), insert the following provision:

USE OF DOUBLE-SIDED COPYING IN THE SUBMISSIONS OF BIDS OR PROPOSALS (DEC 1994)

(a) For the purposes of this provision, "double-sided copying" means copying two one-sided originals on to the front and back side of one sheet of paper.

(b) Unless otherwise stated in the solicitation, offerors shall use double-sided copying to reproduce all bids or proposals in response to this solicitation.

(End of provision)

[59 FR 66768, Dec. 28, 1994]

652.223-73 Use of Double-Sided Copying in the Submission of Reports.

As prescribed in 623.480(d), insert the following clause:

USE OF DOUBLE-SIDED COPYING IN THE SUBMISSION OF REPORTS (DEC 1994)

(a) For the purposes of this clause, "double-sided copying" means copying two one-sided originals on to the front and back side of one sheet of paper.

(b) Unless otherwise stated in this contract or otherwise directed by the contracting officer, the contractor shall use double-sided copying to reproduce any progress report, draft report, or final report produced under this contract.

(End of clause)

[59 FR 66769, Dec. 28, 1994]

652.223-74 Use of Fly Ash as a Partial Replacement for Cement and Concrete.

As prescribed in 623.480(e), insert the following clause:

USE OF FLY ASH AS A PARTIAL REPLACEMENT FOR CEMENT AND CONCRETE (DEC 1994)

The Architect/Engineer shall specify the performance requirements of the cement and concrete products required under the contract using standard specifications when available. Consistent with such performance specifications, the Architect/Engineer shall specify the use of fly ash, a finely divided residue resulting from the combustion of coal, as a partial replacement for cement and concrete to the maximum extent practicable in accordance with ANSI/ASTM Standards and all applicable codes.

(End of clause)

[59 FR 66769, Dec. 28, 1994]

652.223-75 Use of Recovered Materials in Building Insulation Products.

As prescribed in 623.480(f), insert the following clause:

USE OF RECOVERED MATERIALS IN BUILDING INSULATION PRODUCTS (DEC 1994)

(a) This clause applies to building insulation products used in the construction of

ceilings, floors, foundations, and walls, and includes blanket, board, spray-in place and loose-fill insulations.

(b) The Department's minimum content standard for recovered material in building insulation products is set forth below.

Material type	Percent by weight
Cellulose loose-fill and spray on	75% post-consumer recovered material.
Perlite composition board	23% post-consumer recovered paper.
Plastic Rigid Foams—polyisocyanurate/polyurethane:	
Rigid foam	9% recovered material.
Foam-in-place	5% recovered material.
Glass fiber reinforced	6% recovered material.
Phenolic rigid foam	5% recovered material.
Rock Wool	75% recovered material.

NOTE: The minimum content standards are based on the weight of the material (not volume) in the insulating core only.

(c) The Architect/Engineer shall include as a design consideration the Department's preference for the use of building insulation produced with recovered materials. The Architect/Engineer shall specify the type of building insulation products to be supplied, and shall justify in writing the basis of the selected product type if it is listed above, or if any product listed above has a higher minimum content standard than the selected product.

(End of clause)

[59 FR 66769, Dec. 28, 1994]

652.223-76 Use of Lubricating Oils Containing Re-Refined Oils.

As prescribed in 623.480(g), insert the following clause:

USE OF LUBRICATING OILS CONTAINING RE-REFINED OILS (DEC 1994)

(a) If the contractor is required to supply lubricating oils, hydraulic fluids, or gear oils under this contract, the contractor shall supply products conforming to the listed military specifications as set forth below unless the contracting officer determines that the listed products will not satisfy the Department's needs.

EPA LUBRICATING OILS CONTAINING RE-REFINED OIL

(1) Engine Lubricating Oils

- (i) MIL-L-46152 (or current version)—Lubricating Oil Internal Combustion Engine, Administrative Service
- (ii) API Engine Service Category SF-1980 Gasoline Engine Warranty Maintenance Service

- (iii) API Engine Service Category CC-Diesel Engine Service
- (iv) MIL-L-2104D (or current version)—Lubricating Oil Internal Combustion Engine, Tactical Service
- (v) API Engine Service Category CD-Diesel Engine Service
- (vi) MIL-L-21260D (or current version)—Lubricating Oil Internal Combustion Engine, Preservative and Break-In
- (vii) MIL-L-4617 (or current version)—Lubricating Oil, Internal Combustion Engine, Arctic

(2) Hydraulic Fluids

- (i) MIL-H-5606 (or current version)—Hydraulic Fluid, Petroleum Base: Aircraft, Missile, and Ordnance
- (ii) MIL-H-6083 (or current version)—Hydraulic Fluid, Petroleum Base: Preservation and Operation

(3) Gear Oils

- (i) MIL-L-2105d (or current version)—Lubricating Oil, Gear, Multipurpose

(b) Copies of the above specifications may be obtained from: Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094.

(c) Any lubricating oils, hydraulic fluids, or gear oils delivered under this contract that conform to the above listed military specifications shall contain a minimum of 25% re-refined oils.

(End of clause)

[59 FR 66769, Dec. 28, 1994]

652.223-77 Use of Retread Tires.

As prescribed in 623.480(h), insert the following clause:

USE OF RETREAD TIRES (DEC 1994)

(a) If the contractor is required to maintain or replace Government tires under this

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contract, the contractor shall to the maximum extent practicable obtain retreading services for existing tires, if the carcass is retreadable, from firms identified in the U.S. General Services Administration's Federal Supply Schedule 26 II, Pneumatic Tires.

(b) If such retreading services are not practicable, replacement retread tires shall be procured in accordance with GSA specification ZZ-T-381 for replacement tires.

(End of clause)

[59 FR 66769, Dec. 28, 1994]

652.223-78 Use of Recovered Materials in Paper and Paper Products.

As prescribed in 623.480(i), insert the following clause:

USE OF RECOVERED MATERIALS IN PAPER AND PAPER PRODUCTS (DEC 1994)

(a) If the contractor is required under this contract to deliver any of the paper and paper products listed below, all such items delivered shall meet the minimum content standards for recovered materials, postconsumer recovered materials, or waste paper set forth in paragraph (b).

(1) Recovered materials are defined as waste material and by-products that have been recovered or diverted from solid waste, not including those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(2) Postconsumer recovered materials are defined as waste materials recovered from retail stores, office buildings, homes and so forth after they passed through their end usage as a consumer item.

(3) Waste paper is defined as all items from the first two categories above in addition to forest residues, and manufacturing and other wastes.

(b) Unless otherwise stated in this contract or otherwise directed by the contracting officer, the contractor shall use "High Grade Bleached Printing and Writing Papers" as defined in this clause to produce all progress reports, final reports, and any other products required to be delivered to the Government under this contract.

MINIMUM CONTENT STANDARDS FOR SELECTED PAPER AND PAPER PRODUCTS

Newsprint

40% minimum postconsumer recovered materials

High Grade Bleached Printing and Writing Papers

Offset printing—50% minimum waste paper
Mimeo and duplicator paper—50% minimum waste paper
Writing (stationery)—50% minimum waste paper

Office paper (e.g., note pads)—50% minimum waste paper
Paper for high speed copiers—50% minimum waste paper
Envelopes—50% minimum waste paper
Form bond including computer paper and carbonless—50% minimum waste paper
Book papers—50% minimum waste paper
Bond papers—50% minimum waste paper
Ledger—50% minimum waste paper
Cover stock—50% minimum waste paper
Cotton fiber papers—25% minimum recovered materials and 50% minimum waste paper

Tissue Products

Toilet tissue—20% minimum postconsumer recovered materials
Paper towels—40% minimum postconsumer recovered materials
Paper napkins—30% minimum postconsumer recovered materials
Facial tissue—5% minimum postconsumer recovered materials
Doilies—40% minimum postconsumer recovered materials
Industrial wipes—0% minimum postconsumer recovered materials

Unbleached Packaging

Corrugated boxes—35% minimum postconsumer recovered materials
Fiber boxes—35% minimum postconsumer recovered materials
Brown papers (e.g., bags)—5% minimum postconsumer recovered materials

Recycled Paperboard

Recycled paperboard products—80% minimum postconsumer recovered materials
Pad backing—90% minimum postconsumer recovered materials

(End of clause)

[59 FR 66769, Dec. 28, 1994]

652.228-70 Indemnification.

As prescribed in 628.7001(b), insert the following clause in solicitations and contracts when the contractor's assumption of risk is in the best interest of the Government.

INDEMNIFICATION (JULY 1988)

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged negligence of the Government, its officers, agents, servants, or employees, shall not bar

a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.

(End of clause)

652.228-71 Worker's Compensation Insurance (Defense Base Act)—Services.

As prescribed in 628.305(b)(1), insert the following clause:

WORKER'S COMPENSATION INSURANCE
(DEFENSE BASE ACT)—SERVICES (DEC 1994)

(a) This clause supplements FAR 52.228-3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award.

(c) Since the Department of State has secured a waiver of DBA coverage for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) The cost of DBA insurance is paid on an annual basis. If the period of performance of this contract extends beyond one year, the Department shall reimburse the contractor for any additional insurance cost on a reimbursable basis through a contract modification.

(f) Should the rates for DBA insurance coverage increase during the performance of this contract, the Department shall reimburse the contractor for the increased cost through a contract modification. In the event the DBA insurance rates decrease during contract performance, the contractor shall reduce the reimbursable cost proportionately.

(End of clause)

[59 FR 66770, Dec. 28, 1994]

652.228-72 Worker's Compensation Insurance (Defense Base Act)—Construction.

As prescribed in 628.305(b)(2), insert the following clause:

WORKER'S COMPENSATION INSURANCE (DEFENSE BASE ACT)—CONSTRUCTION (DEC. 1994)

(a) This clause supplements FAR 52.228-4.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is *[contracting officer insert current rate]* of compensation for construction.

(c) Since the Department of State has secured a waiver of DBA coverage for contractor's employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expense, etc.

(End of clause)

[59 FR 66770, Dec. 28, 1994]

652.228-73 Waiver of the Defense Base Act.

As prescribed in 628.305(b)(3), insert the following clause:

WAIVER OF THE DEFENSE BASE ACT (DEC 1994)

(a) Upon recommendation of the Secretary of State, the Secretary of Labor may waive the applicability of the Defense Base Act with respect to any contract, subcontract, or

subordinate contract; work location; or classification of employees.

(b) Either the contractor or the Department of State may request a waiver from coverage. Such a waiver may apply to any employees who are not U.S. citizens, not residents of, or are not hired in the United States. Waivers requested by the contractor shall be submitted to the contracting officer for approval and further submission to the contracting officer for approval and further submission to the Department of Labor. Application for a waiver shall be submitted on Department of Labor Form BEC-565. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other worker's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing worker's compensation coverage of the country where work will be performed or of the employee's native country, whichever offers greater benefits. Information as to whether a DBA waiver has been obtained by the Department for a particular country may be obtained from the contracting officer.

(End of clause)

[59 FR 66770, Dec. 28, 1994]

652.228-74 Defense Base Act Insurance Rates—Limitation—Services.

As prescribed in 628.306(a)(1), insert the following provision:

DEFENSE BASE ACT INSURANCE RATES—
LIMITATION—SERVICES (DEC 1994)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ [contracting officer insert current rate] of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees:

(2) Defense Base Act Insurance Costs:

(3) Total Cost: _____

(c) Bidders/Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

[59 FR 66771, Dec. 28, 1994]

652.228-75 Defense Base Act Insurance Rates—Limitation—Construction.

As prescribed in 628.306(a)(2), insert the following provision:

DEFENSE BASE ACT INSURANCE RATES—
LIMITATION—CONSTRUCTION (DEC 1994)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Construction @ [contracting officer insert current rate] of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees:

(2) Defense Base Act Insurance Costs:

(3) Total Cost: _____

(End of provision)

[59 FR 66771, Dec. 28, 1994]

652.228-76 Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement.

As prescribed in 628.307, insert the following provision:

DEFENSE BASE ACT INSURANCE RATES—
LIMITATION—COST-REIMBURSEMENT (DEC 1994)

(a) The Department of State has entered into a contract with an insurance carrier for Defense Base Act (DBA) insurance which applies to all contracts entered into by the Department which requires DBA insurance coverage. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for such insurance:

Services—[contracting officer insert current rate] of compensation (direct salary plus differential but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); and

(2) Construction—[contracting officer insert current rate] of compensation.

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(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include in their proposals a statement as to whether or not local nationals or third country nationals are proposed on this contract.

(End of provision)

[59 FR 66771, Dec. 28, 1994]

652.228-77 Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Materials.

As prescribed in 628.307-70, insert the following provision:

DEFENSE BASE ACT INSURANCE RATES—LIMITATION—LABOR-HOUR AND TIME-AND-MATERIALS (DEC 1994)

(a) The Department of State has entered into a contract with an insurance carrier for Defense Base Act (DBA) insurance which applies to all contracts entered into by the Department which requires DBA insurance coverage. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for such insurance:

(1) Services—[contracting officer insert current rate] of compensation (direct salary plus differential but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); and

(2) Construction—[contracting officer insert current rate] of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Offerors shall include in their proposals a statement as to whether or not local nationals or third country nationals are proposed on this contract.

(End of provision)

[59 FR 66771, Dec. 28, 1994]

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

As prescribed in 629.401-70, insert the following clause in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

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EXCISE TAX EMEMPTION STATEMENT FOR CONTRACTORS WITHIN THE UNITED STATES (JULY 1988)

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(END OF CLAUSE)

652.232-70 Payment Schedule and Invoice Submission (Fixed-Price).

As prescribed in 632.908(a), the contracting officer may insert a clause substantially the same as follows:

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (DEC 1994)

(a) General. The Government shall pay the contractor as full compensation for all work required, performed and accepted under this contract, inclusive of all costs and expenses, the firm fixed-price stated in Section B of this contract.

[Use paragraph (b) only if partial payments apply. Otherwise, paragraph (a) above assumes the contractor will be paid in full amount upon completion of all contractual requirements].

(b) Payment Schedule. Payments will be made in accordance with the following partial payment schedule:

Partial payment No.	Specific deliverable	Delivery date	Payment amount
1			
2			
3			

[Continue as necessary]

(c) Invoice Submission. Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] copies to the Office identified in Block 5 of the SF-26 or Block 7 of the SF-33. To constitute a proper invoice, the invoice must include all items per FAR 52.232-25, "Prompt Payment".

(d) Contractor Remittance Address. Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(End of clause)

[59 FR 66771, Dec. 28, 1994]

652.232-71 Voucher Submission (Cost-Reimbursement).

As prescribed in 632.908(b), the contracting officer may insert a clause substantially the same as follows:

VOUCHER SUBMISSION (COST-REIMBURSEMENT)
(DEC 1994)

(a) *General.* The contractor shall submit, on a monthly basis [contracting officer may substitute a different time frame, if appropriate], an original and [contracting officer insert appropriate number] copies of each voucher. In addition to the items necessary per FAR 52.232-25, "Prompt Payment", the voucher shall show the elements of cost for the billing period and the cumulative costs to date. All vouchers shall be submitted to the office identified in Block 5 of the SF-26 or Block 7 of the SF-33.

(b) *Contractor Remittance Address.* Payment shall be made to the contractor's address as specified on the cover page of this contract, unless a separate remittance address is specified below:

(End of clause)

[59 FR 66772, Dec. 28, 1994]

652.237-70 Compensatory time off.

As prescribed in 637.110(a), insert the following clause:

COMPENSATORY TIME OFF (DEC 1994)

(a) Compensatory time off means time from work during the personal service contract employee's basic work week in exchange for performing an equal amount of irregular or occasional overtime work which is officially ordered or approved.

(b) At the discretion of the Contracting Officer's Representative (COR), the contractor may earn compensatory time off in accordance with 3 FAM Section 232.6—Compensatory Time Off. Compensation time off remaining to the credit of a personal services contract employee at the end of a 16-week period and/or at the end of the contract period shall be forfeited.

(c) Compensatory time may not be converted to overtime.

(End of clause)

[59 FR 66772, Dec. 28, 1994]

652.237-71 Identification/Building Pass.

As prescribed in 637.110(b), insert the following clause.

IDENTIFICATION/BUILDING PASS (DEC 1994)

(a) The contractor shall obtain a Department of State building pass for all employees performing under this contract who require frequent and continuing access to Department of State facilities. Passes shall be issued only to contractor employees who are United States citizens. Passes will be issued by the Bureau of Diplomatic Security, Office of Procedural Security, Domestic Facilities Division. They shall be used for the purpose of contractor performance only, and shall not be used for any other purpose.

(b) The contractor shall submit an application in the form prescribed by the COR. The contractor shall also provide a letter on company letterhead to accompany the application containing the following information:

(1) The purpose for which the pass is being requested;

(2) The type of access the applicant requires;

(3) Whether or not the applicant has a valid security clearance; and,

(4) The contract number and period of performance of the contract.

(c) The complete package, including the COR's approval memorandum, shall be delivered to the Building Pass Application Unit, Room 309, State Annex Number 1, Columbia Plaza, 2401 E Street, NW., Washington, DC; or, the post security officer, if the contract is performed at a U.S. owned or leased building overseas. The employee(s) for whom the pass(es) is/are being requested may be required to personally submit the application and to provide evidence of identity and United States citizenship.

(d) All contractor employees shall wear the passes in plain sight at all times while in Department of State buildings. All contractor employees shall show their passes when entering these buildings and upon request.

(e) All passes shall be returned to the COR upon separation of the employee, or expiration or termination of the contract. Final payment under this contract shall not be made until all passes are returned to the COR.

(End of clause)

[59 FR 66772, Dec. 28, 1994]

652.237-72 Observance of Legal Holidays and Administrative Leave.

As prescribed in 637.110(c), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND ADMINISTRATIVE LEAVE (DEC 1994)

(a) The Department of State observes the following days as holidays:

- New Year's Day
- Martin Luther King's Birthday
- Presidents' Day

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Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Any other day designated by Federal law, Executive Order, or Presidential Proclamation.

(b) When any such day falls on a Saturday, the preceding Friday is observed; when any such day falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, unless authorized pursuant to an overtime clause elsewhere in this contract.

(c) When the Department of State grants administrative leave to its Government employees, assigned contractor personnel in Government facilities shall also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled, and shall be guided by the instructions issued by the contracting officer or his/her duly authorized representative.

(d) For fixed-price contracts, if services are not required or provided because the building is closed due to inclement weather, unanticipated holidays declared by the President, failure of Congress to appropriate funds, or similar reasons, deductions will be computed as follows:

(1) The deduction rate in dollars per day will be equal to the per month contract price divided by 21 days per month.

(2) The deduction rate in dollars per day will be multiplied by the number of days services are not required or provided. If services are provided for portions of days, appropriate adjustment will be made by the contracting officer to ensure that the contractor is compensated for services provided.

(e) If administrative leave is granted to contractor personnel as a result of conditions stipulated in any "Excusable Delays" clause of this contract, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of direct cost hereunder for employees whose regular time is normally charged, and a reimbursable item of indirect cost for employees whose time is normally charged indirectly in accordance with the contractor's accounting policy.

(End of clause)

[59 FR 66772, Dec. 28, 1994]

48 CFR Ch. 6 (10-1-97 Edition)

652.242-70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert a clause substantially the same as follows:

CONTRACTING OFFICER'S REPRESENTATIVE (COR) (DEC 1994)

(a) The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer and this authority is delegated in the designation.

(b) The COR is [insert name of COR].

(End of clause)

[53 FR 26177, July 11, 1988, as amended at 59 FR 66772, Dec. 28, 1994]

652.242-71 Notice of Shipments.

As prescribed in 642.1406-2-70(a), insert the following clause in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

NOTICE OF SHIPMENTS (JULY 1988)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

(End of clause)

652.242-72 Shipping Instructions.

As prescribed in 642.1406-2-70(b), insert the following clause in solicitations and contracts with a source in the United States and requiring overseas shipment of supplies.

SHIPPING INSTRUCTIONS (DEC 1994)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to

withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than 1/3 of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 45 kg	19.05 × 57.15mm
46 to 113 kg	22.23 × 73.03mm
114 to 181 kg	22.23 × 98.43mm
182 to 272 kg	22.23 × 123.83mm or 25.4 × 98.43 mm

(b) Each box shall be lined with waterproof paper and shall be bound with 19.05mm" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 453.5kg and more must be equipped with skids. Each skid shall consist of two end sections of 50.8 × 152.4mm lumber placed flat and a center section of 50.8 × 101.6mm lumber placed flat and then arranged in line to provide 254mm fork-lift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in packing case number one, which shall be marked as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in kilograms shall be stenciled on the same side. However, if the size of the box is too small to accommodate all stenciling on one side, the

contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

[53 FR 26177, July 11, 1988; 53 FR 36462, Sept. 20, 1988, as amended at 59 FR 66772, Dec. 28, 1994]

652.246-70 Commercial Warranty.

As prescribed in 646.710-70, insert the following clause in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

COMMERCIAL WARRANTY (JULY 1988)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. The rights and remedies provided herein are in addition to and to not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)

PART 653—FORMS

Sec. 653.000 Scope of part.

Subpart 653.1—General

- 653.101 Requirements for use of forms.
- 653.101-70 Policy.
- 653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

- 653.200 Scope of subpart.
- 653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
- 653.213-70 DOS Forms (OF-206, OF-206A, OF-127, DST-1918, DST-1919, DST-1920).
- 653.217 Special contracting methods.
- 653.217-70 DOS form DS-1921, Award/Modification of Interagency Acquisition Agreement.
- 653.219 Small business and small disadvantaged business concerns.
- 653.219-70 DOS form DS-1910, Small Business/Labor Surplus Area Review—Actions Above the Simplified Acquisition Threshold.

Subpart 653.3—Illustrations of Forms

- 653.300 Scope of subpart.
- 653.303 Agency forms.

653.000

- 653.302 .127 Optional Form 127, Receiving and Inspection Report.
- 653.302 .206 Optional Form 206, Purchase Order, Receiving Report and Voucher.
- 653.302 .206A Optional Form 206A, Purchase Order, Receiving Report and Voucher—Continuation Sheet.
- 653.303- DST-1089 Department of State Form 1089, Order—Supplies or Services.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26180, July 11, 1988, unless otherwise noted.

653.000 Scope of part.

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

Subpart 653.1—General

653.101 Requirements for use of forms.

653.101-70 Policy.

The forms in FAR Subpart 53.2 or in Subpart 653.2 shall be used as prescribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR Subpart 1.4 and 601.470.

653.110 Continuation sheets.

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

653.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.213-70 DOS Forms (OF-206, OF-206A, OF-127, DST-1918, DST-1919, DST-1920).

As provided in 613.505-2 and 613.505-70, the following forms are prescribed for use in simplified acquisitions, delivery orders, and blanket purchase agreements:

(a) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form (OF) 206A, Continuation Sheet. OF-206 and OF-206A are prescribed for use by overseas contracting activities in lieu of the OF-347 and OF-348, as specified in 613.505-2(a).

(b) Optional Form (OF) 127, Receiving and Inspection Report. OF/127 is prescribed for use by overseas contracting activities as a receiving report when using the OF-206, as specified in 613.505-2(b). The OF-127 may be used as a receiving report in conjunction with other contract forms (e.g., SF-26, SF-33) by both domestic and overseas contracting activities.

(c) DST-1918, Purchase Order File. DST-1918 is prescribed for use in recording and documenting relevant data pertaining to open market simplified acquisitions, as specified in 613.505-70.

(d) DST-1919, Deliver Order File. DST-1919 is prescribed for use in recording and documenting relevant data pertaining to delivery orders issued against GSA mandatory and non-mandatory schedule contracts, as well as Department of State and other agency contracts, as specified in 613.505-70.

(e) DST-1920, Blanket Purchase Agreement (BPA) File. DST-1920 is prescribed for use in recording and documenting relevant data pertaining to Blanket Purchase Agreements, as specified in 613.505-70.

[59 FR 66773, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

653.217 Special contracting methods.

653.217-70 DOS form DS-1921, Award/Modification of Interagency Acquisition Agreement.

As prescribed in 617.504-70(b)(5)(i), DS-1921 is prescribed for use when awarding or modifying Economy Act

Department of State

653.303

Interagency Acquisition Agreements where the Department is the requesting agency.

[59 FR 66773, Dec. 28, 1994]

653.219 Small business and small disadvantaged business concerns.

653.219-70 DOS form DS-1910, Small Business/Labor Surplus Area Review—Actions Above the Simplified Acquisition Threshold.

As prescribed in 619.501(c), DS-1910 is prescribed for use in documenting set-aside decisions.

[59 FR 66773, Dec. 28, 1994, as amended at 60 FR 39663, Aug. 3, 1995]

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3.

653.303 Agency forms.

This section illustrates the DOS forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DOS form numbers.

653.302.206 OPTIONAL FORM 206, PURCHASE ORDER,
RECEIVING REPORT AND VOUCHER

Form approved by Comptroller General, U.S. March 19, 1953		PURCHASE ORDER, RECEIVING REPORT AND VOUCHER (For use in foreign countries only)			D.O. Vou. No.
Department or Establishment U. S.		Purchase Order No.			Bu. Vou. No.
Prepared at	(place)	(date)	PAID BY		
Purchaser THE UNITED STATES GOVERNMENT, DR.					
Seller (Payee)					
Address of seller					
Contract No.		(dated)			
Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:					
To					at
ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT
			Cost	Per	
Use continuation sheet(s) if necessary -					
Ordering Officer (Signature)		Approp.	Funds Available:		
		Allot.			
Name:		Obl. No.	Name:		
Title:		Amt.	Title:		
			TOTAL		
I certify that the ordered items listed were received on (date) except as follows:		PAYMENT:		Amount billed, as per attached bill(s)	
		<input type="checkbox"/> Complete		Differences	
Signature		<input type="checkbox"/> Partial		Amount verified correct for	
Name:		<input type="checkbox"/> Final		Prepayment Audit (Signature or initials)	
Title:					
Approved for		Pursuant to authority vested in me, I certify this voucher correct and proper for payment.			
\$		Signature of Authorized Certifying Officer			
Exchange rate		Name:			
to \$		Title:			
ACCOUNTING CLASSIFICATION					
Fund	Allotment	Oblig. No.	Paying Office	Date Paid	Object
					Amount
P Check No. dated , 19 , for \$ on Treasurer of United States.					
A Check No. dated , 19 , for on					
D Cash on 19 Payee					
B Title of Payee:					
Y					

OPTIONAL FORM 206
(FORMERLY FS-455)
MARCH 1953
DEPT. OF STATE

50206-101

IMPORTANT NOTICE TO SELLER

1. The entering office is exempt from taxes.
2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."
3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.
4. All communications concerning this order must refer to order number and be addressed to the originating office.
5. Discount terms, if any, must be shown on all bills.

**653.303-DS-1771 DEPARTMENT OF STATE FORM (DS) 1771,
CONTRACTOR EVALUATION STATEMENT
DEPARTMENT OF STATE**

WASHINGTON, D.C. 20520

CONTRACTOR EVALUATION STATEMENT

(If additional space is required, continue on blank paper, referencing items by number)		Date Prepared
NOTE: The information contained on this form is for the internal use of the Department of State and shall not be disclosed outside the Department except as authorized by the Assistant Secretary of State for Administration		
TO: Chief Contract Section OPR/ST/P, Room 530, 5A6 Washington, D.C. 20520	FROM: (Name and location of program office)	
Name and Address of Contractor	Contract No.	

I. EVALUATION OF CONTRACTOR'S PERFORMANCE

1. Explain the contractor's performance as compared to the requirements of the statement of work and its proposal, including quantity, quality, and timeliness of work done.
2. Explain relationship of contractor's personnel to the Department and other parties involved in the performance of the contract. (Did contractor's personnel conduct themselves in a professional and businesslike manner? Did they respond in a constructive way for problems and difficulties as they arose? Was there stability in the leadership and personnel assigned to the contractor or were there numerous changes?)
3. Did contractor report on progress in a timely and thorough manner as called for by the contract?
 Yes No (Explain)
4. Did contractor perform within the cost structure of the contract? Yes No (Explain)
5. To what extent was the final product of the contractor, including data and conclusions, responsive to the stated purpose of the contract?
6. How do you rate the contractor's overall performance?
 Excellent Satisfactory Less Than Satisfactory (Explain)
7. Do you recommend that the contractor be used again? Yes No (Explain)

II. EVALUATOR

Typed name and title of Technical Project Officer	Signature	Date Signed
III. APPROVAL (By Deputy Assistant Secretary/Major Office Director)		
Typed name and title of approving official	Signature	Date Approved

FORM DS-1771
3-78

**653.303-DST-1089 DEPARTMENT OF STATE FORM 1089,
ORDER—SUPPLIES OR SERVICES**

DEPARTMENT OF STATE
WASHINGTON, DC 20520
ORDER — SUPPLIES OR SERVICES
(Subject to terms and conditions on reverse side)

Page of Pages

ORDER NUMBER MUST APPEAR ON ALL PACKAGES AND RELATED PAPERS.										ATTENTION: _____	
1. Form 2. CONTRACT NUMBER										PHONE: _____	
3. C. 4. DEST. 5. PSC 6. SHIPPING INSTRUCTIONS										7. ORDER NUMBER	
8. Comm. 9. GBL NUMBER 10. Type 11. Date P. 12. REG OFFICE										13. Date Rec. 14. Date Sig.	
15. DESCRIPTION										16. AMOUNT	
17. APPROPRIATION										ALLOTMENT	
										OBLIG. ORG. FUNC. OBJ. S OBJ.	
18. CONTRACTOR TO: _____ DUNS ID: _____										19. CONSIGNEE AND DESTINATION	
										S H I P T O	
										20. ULTIMATE DESTINATION	
										ZIP	
LINE ITEM	CATALOG/NSN	S. ID	SUPPLIES OR SERVICES				Delivery Date	U O I	NO OF UNITS	UNIT PRICE	TOTAL
21. FOB POINT/FAS POINT			22. DISCOUNT			23. ISSUER'S NAME			24. ISSUER'S PHONE		
BILLING INSTRUCTIONS											
Contractor's invoice shall be submitted in an original and one copy to: Office of Finance — General Claims P.O. Box 9487 Rosslyn Station Arlington, VA 22209						cost and total amount. Contractor must furnish signed receipt from transportation carrier as proof that shipment has been forwarded.					
Invoices must show the Department's 10 digit order number, time payment discount (even if not), description of each item, quantity, unit						When Contractor is requested to prepay transportation charges against an F.O.B. order, such charges are to be added as a separate item to the invoice and must be supported by a paid transportation receipt. If shipment via APO, furnish postal receipts.					
25. CONTRACTING/ORDERING OFFICER											
Signature _____						Date _____					

FORM DST - 1099-4-81

ORIGINAL CONTRACTOR

TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER

Note: If a contract number is shown, Terms and Conditions of the applicable contract shall apply to this Delivery Order which is issued pursuant thereto.

1. **INSPECTION AND ACCEPTANCE** - Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. **VARIATION IN QUANTITY** - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. **DISCOUNTS** - (a) Time discounts will be computed from: (1) date of delivery of the supplies to carrier when delivery and acceptance are at the point of origin, (2) date of delivery at destination or port of embarkation, when delivery and acceptance are at either of those points, or (3) date a proper invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of delivery. (b) Payment will be deemed to have been made on the date which appears on payment checks.

4. **DISPUTES** - (This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563 "the Act"). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract. The parties to this contract must comply with certain time restrictions on rendering of contracting officer decisions on claims, and on the appeal of those decisions. Further details on the rights and remedies under the Act may be found in the Federal Procurement Regulations at 1-1.318.4.

5. **FOREIGN SUPPLIES** - This contract is subject to the Buy American Act (41 U.S.C. 101 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. **CONVICT LABOR** - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c) (2)) and Executive Order 11775, December 29, 1973.

7. **OFFICIALS NOT TO BENEFIT** - No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but

this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. **COVENANT AGAINST CONTINGENT FEES** - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. **FEDERAL, STATE, AND LOCAL TAXES** - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this Purchase Order.

10. **SERVICE CONTRACT ACT OF 1965, As Amended (Service contracts not exceeding \$2,500)** - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of \$2,500, the Contractor and any sub-contractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed by 29 CFR Part 4 are hereby incorporated by reference in this contract.

11. The following terms and conditions are applicable to purchases in excess of \$2,500: (a) Employment of the Handicapped - Federal Procurement Regulation, Temporary Regulation 38, dated May 26, 1976. (b) Contract Work Hours and Safety Standards Act - Overtime Compensation Section - Federal Procurement Regulation 1-12.303. (c) Service Contract Act of 1965 - (Services contracts in excess of \$2,500) Federal Procurement Regulation 1-12.904-1.

MARKING INSTRUCTIONS

CONTAINERS OR PACKAGES shall be plainly marked to show the order number, brief description of contents, including form number, if any, quantity and vendor's name.

Receiving clerk may reject any deliveries which do not bear such identification.

SHIPPING DOCUMENTS AND CORRESPONDENCE

All shipping documents and correspondence pertaining to this order (except invoices as stated below) shall be referred or forwarded to

the person and organization who signed the order. Such documents MUST refer to the departments order number.