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Federal Acquisition Regulations System

48

CHAPTERS 15 TO 28

Revised as of October 1, 1997

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1997

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 1501.000 *refers to title 48, part 1501, section 000.*

Explanation

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

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

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

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

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

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EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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

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

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

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

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

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

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

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

October 1, 1997.

THIS TITLE

Title 48—FEDERAL ACQUISITION REGULATIONS SYSTEM is composed of eight volumes. The chapters in these volumes are arranged as follows: Chapter 1 (parts 1 to 51), chapter 1 (parts 52 to 99), chapter 2 (parts 201 to 299), chapters 3 to 6, chapters 7 to 14, chapters 15 to 28 and chapter 29 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1997.

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

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

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

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

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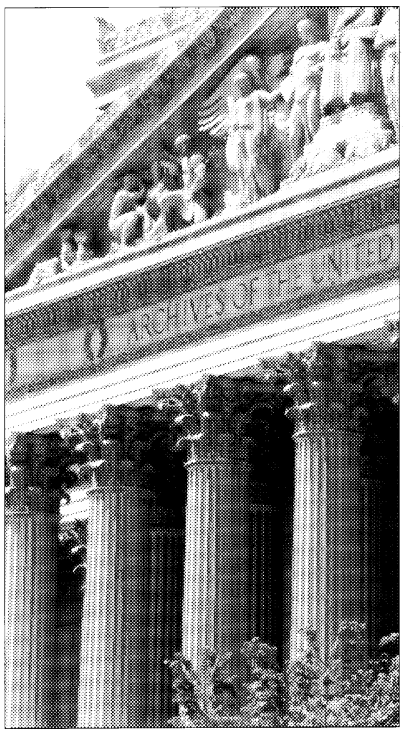

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SUBCHAPTER A—GENERAL

PART 1501—GENERAL

Sec.
1501.000 Scope of part.

Subpart 1501.1—Purpose, Authority, Issuance

1501.101 Purpose.
1501.104 Applicability.
1501.105 Issuance.
1501.105–1 Publication and code arrangement.
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1501.602–3 Ratification of unauthorized commitments.
1501.603 Selection, appointment, and termination of appointment.
1501.603–1 General.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8835, Mar. 8, 1984, unless otherwise noted.

1501.000 Scope of part.

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

Subpart 1501.1—Purpose, Authority, Issuance

1501.101 Purpose.

This subpart establishes Chapter 15, the Environmental Protection Agency Acquisition Regulation (EPAAR), within Title 48, the Federal Acquisition Regulations System.

[60 FR 38505, July 27, 1995]

1501.104 Applicability.

The FAR (48 CFR chapter 1) and the EPAAR (48 CFR chapter 15) apply to all EPA acquisitions as defined in part 2 of the FAR, except where expressly excluded.

[62 FR 33572, June 20, 1997]

1501.105 Issuance.

1501.105–1 Publication and code arrangement.

The EPAAR will be published in: (a) The FEDERAL REGISTER, (b) cumulated form in the Code of Federal Regulations (CFR), and (c) a separate loose-leaf form in a distinctive light blue color.

[49 FR 8835, Mar. 8, 1984. Redesignated at 62 FR 33572, June 20, 1997]

1501.105–2 Arrangement of regulations.

(a) *References and citations.* This regulation may be referred to as the Environmental Protection Agency Acquisition Regulation or the EPAAR. References to EPAAR materials shall be made in a manner similar to that prescribed by FAR 1.105–2(c).

[49 FR 8835, Mar. 8, 1984. Redesignated and amended at 62 FR 33572, June 20, 1997]

1501.105–3 Copies.

Copies of the EPAAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of loose-leaf EPAAR are distributed within EPA and may be obtained from

the EPA Facilities and Support Services Division.

[49 FR 8835, Mar. 8, 1984. Redesignated at 62 FR 33572, June 20, 1997]

Subpart 1503.3—Agency Acquisition Regulations

1501.301 Policy.

The EPAAR is prescribed by the Director, Office of Acquisition Management.

[49 FR 8835, Mar. 8, 1984, as amended at 59 FR 18976, Apr. 21, 1994]

§ 1501.370 OMB approvals under the Paperwork Reduction Act.

The information collection activities contained in the EPAAR sections listed below have been approved by the Office of Management and Budget (OMB) and have been issued OMB numbers in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

48 CFR citation	OMB control No.
Specification, Standards and other Purchase Descriptions	
1510.011–70 through 1510.011–72	2030–0005
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Small Purchase and Other Simplified Purchase Procedures	
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1552.227–76	2030–0023

[59 FR 18619, Apr. 19, 1994, as amended at 59 FR 32134, June 22, 1994; 61 FR 29316, June 10, 1996]

Subpart 1501.4—Deviations

1501.401 Definition.

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

[49 FR 8835, Mar. 9, 1984; 49 FR 24734, June 15, 1984]

1501.403 Individual deviations.

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

Subpart 1501.6—Contracting Authority and Responsibilities

1501.602–3 Ratification of unauthorized commitments.

(a) *Applicability.* The provisions of this section apply to all unauthorized commitments, whether oral or written and without regard to dollar value. Examples of unauthorized commitments are;

(1) Ordering supplies or services by an individual without contracting authority;

(2) Unauthorized direction of work through assignment of orders or tasks;

(3) Unauthorized addition of new work;

(4) Unauthorized direction of contractors to subcontract with particular firms; or

(5) Any other unauthorized direction which changed the terms and conditions of the contract.

(b) *Ratification approvals and concurrences.* (1) The Chief of the Contracting Office is the ratifying official, provided that he/she has redelegable contracting authority.

(2) For ratification actions which arise in regional offices or laboratory sites, the Chief of the Contracting Office to whom the activity functionally reports is the ratifying official.

(3) All proposed ratification actions of $250,000 or more for which the Chief of the Contracting Office is not the ratifying official shall be forwarded for review to the responsible PCMD Associate Director prior to approval by the ratifying official.

(c) *Procedures.* (1) The program office shall notify the cognizant contracting

office by memorandum of the circumstances surrounding an unauthorized commitment. The notification shall include:

(i) All relevant documents and records;

(ii) Documentation of the necessity for the work and benefit derived by the Government;

(iii) A statement of the delivery status of the supplies or services associated with the unauthorized commitment;

(iv) A list of the procurement sources solicited (if any) and the rationale for the source selected;

(v) If only one source was solicited, a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303, or for simplified acquisition procedures exceeding the competition threshold in FAR 13.106, a sole source justification as required by 1513.170;

(vi) A statement of steps taken or proposed to prevent reoccurrence of any unauthorized commitment.

(2) The Division Director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, the program office shall include a Procurement Request/Order, EPA Form 1900–8, with funding sufficient to cover the action. The appropriation data cited on the 1900–8 shall be valid for the period in which the unauthorized commitment was made.

(3) Upon receiving the notification, the Contracting Officer shall prepare a determination and findings regarding ratification of the unauthorized commitment for the ratifying official. The determination and findings shall include sufficient detail to support the recommended action. If ratification of the unauthorized commitment is recommended, the determination and findings shall include a determination that the price is fair and reasonable. To document the determination, additional information may be required from the Contractor. Concurrence by the Office of General Counsel is not mandatory, but shall be sought in difficult or unusual cases.

(4) The ratifying official may inform the Inspector General (IG) of the action by memorandum through the Head of the Contracting Activity (HCA). For ratification actions exceeding the small purchase limitation, the ratifying official shall submit a memorandum to the Assistant Administrator for Administration and Resources Management through the HCA for transmittal to the Assistant, Associate, or Regional Administrator (or equivalent level) of the person responsible for the unauthorized commitment. This memorandum should contain a brief description of the circumstances surrounding the unauthorized commitment, recommend corrective action, and include a copy of any memorandum sent to the IG. Submission of a memorandum to the appropriate Assistant, Associate, or Regional Administrator for unauthorized commitments at or below the small purchase limitation is optional and may be accomplished at the discretion of the ratifying official.

(d) *Paid Advertisements.* (1) EPA is generally not authorized to ratify improperly ordered paid advertisements. The ratifying official, however, may determine payment is proper subject to the limitations in FAR 1.602–3(c) if the individual responsible for the unauthorized commitment acted in good faith to comply with Agency acquisition policies and procedures.

(2) The paying office shall forward invoice claims received in its office for improper paid advertisements to the cognizant ratifying official for a determination regarding ratification of the action.

(3) If the ratifying official determines that an unauthorized commitment cannot be ratified by the Agency, the ratifying official shall instruct the submitter to present its claim to the General Accounting Office in accordance with the instructions contained in 4 CFR part 31, Claims Against the United States, General Procedures.

(e) *Payment of Properly Ratified Claims.* After the unauthorized commitment is ratified, the Contractor must submit an invoice (or resubmit an invoice if one was previously submitted)

citing the appropriate contract or purchase order number.

[55 FR 18340, May 2, 1990, as amended at 59 FR 18976, Apr. 21, 1994; 60 FR 38505, July 27, 1995; 61 FR 57337, Nov. 6, 1996; 62 FR 33572, June 20, 1997]

1501.603 Selection, appointment, and termination of appointment.

1501.603–1 General.

EPA Contracting Officers shall be selected and appointed and their appointments terminated in accordance with the Contracting Officer warrant program specified in chapter 8 of the EPA ''Contracts Management Manual.''

PART 1502—DEFINITION OF WORDS AND TERMS

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1502.1—Definitions

1502.100 Definitions.

Chief of the Contracting Office (CCO) means the Office of Acquisition Management Division Directors at Headquarters, Research Triangle Park and Cincinnati.

Head of the Contracting Activity (HCA) means the Director, Office of Acquisition Management.

Legal Counsel means those attorneys assigned to the Contracts Law Branch and the Research Triangle Park General Counsel Branch, Office of the General Counsel and designated by the Assistant General Counsel as Contract Law Specialists.

Procurement Executive (PE) means the Director, Office of Acquisition Management.

[59 FR 18977, Apr. 21, 1994]

PART 1503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.
1503.000 Scope of part.

Subpart 1503.1—Safeguards

1503.101 Standards of conduct.
1503.103 Independent pricing.

Subpart 1503.2—Contractor Gratuities to Government Personnel [Reserved]

Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

Subpart 1503.5—Other Improper Business Practices [Reserved]

Subpart 1503.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1503.600–70 Scope of subpart.
1503.600–71 Definitions.
1503.601 Policy.
1503.602 Exceptions.
1503.670 Solicitation disclosure provision.

Subpart 1503.9—Whistle Blower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8837, Mar. 8, 1984, unless otherwise noted.

1503.000 Scope of part.

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

Subpart 1503.1—Safeguards

1503.101 Standards of conduct.

1503.103 Independent pricing.

Subpart 1503.2—Contractor Gratuities to Government Personnel [Reserved]

Subpart 1503.3—Reports of Suspected Antitrust Violations [Reserved]

Subpart 1503.4—Contingent Fees

1503.408 Evaluation of the SF 119.

Subpart 1503.5—Other Improper Business Practices [Reserved]

Subpart 1503.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

1503.600–70 Scope of subpart.

This subpart implements and supplements FAR subpart 3.6 and sets forth EPA policy and procedures for identifying and dealing with conflicts of interest and improper influence or favoritism in connection with contracts involving current or former EPA employees. This subpart does not apply to agreements with other departments or agencies of the Federal Government, nor to contracts awarded to State or local units of Government.

1503.600–71 Definitions.

(a) *Regular employee* means any officer or employee of EPA who is employed or appointed, with or without compensation, to serve more than 130 days during any period of 365 consecutive days, including regular officers of the Public Health Service Commissioned Corps and reserve officers of the Public Health Service Commissioned Corps while on active duty.

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

1503.601 Policy.

(a) No contract may be awarded without competition to a former regular or special EPA employee (or to a business concern or other organization owned or substantially owned or controlled by a former employee) whose employment terminated within 365 calendar days before submission of a proposal to EPA.

(b) No contract shall be awarded without competition to a firm which employs, or proposes to employ, a current regular or special EPA employee or a former EPA regular or special employee whose employment terminated within 365 calendar days before submission of a proposal to EPA, if either of the following conditions exits:

(1) The current or former EPA regular or special employee is or was involved in development or negotiating the proposal for the prospective contractor.

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

1503.602 Exceptions.

The Assistant Administrator for Administration and Resources Management may authorize an exception, in writing, to the policy in FAR 3.601 and 1503.601 for the reasons stated in FAR 3.602, if the exception would not involve a violation of 18 U.S.C. 203, 18 U.S.C. 205, 18 U.S.C. 207, 18 U.S.C. 208, or EPA regulations at 40 CFR part 3. The Assistant Administrator shall consult with the Designated Agency Ethics Official before authorizing any exceptions.

[60 FR 38505, July 27, 1995]

1503.670 Solicitation of disclosure provision.

The Contracting Officer shall insert the provision at 1552.203–70, Current/Former Agency Employee Involvement

Certification, in all solicitations for sole source acquisitions.

[50 FR 14357, Apr. 11, 1985]

Subpart 1503.9—Whistle Blower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

The Assistant Administrator for Administration and Resources Management is designated as the recipient of the written report of findings by the Inspector General. The Assistant Administrator shall ensure that the report of findings is disseminated in accordance with FAR 3.905(c).

[61 FR 57337, Nov. 6, 1996]

PART 1504—ADMINISTRATIVE MATTERS

Subpart 1504.8—Contract Files

Sec.
1504.804 Closeout of contract files.
1504.804–5 Detailed procedures for closing out contract files.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 28246, July 11, 1984, unless otherwise noted.

Subpart 1504.8—Contract Files

1504.804 Closeout of contract files.

1504.804–5 Detailed procedures for closing out contract files.

In addition to those procedures set forth in FAR 4.804–5, the contracting office shall, before final payment is made under a cost reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred should be obtained from the Office of Audit through the cost advisory group at the contracting office in the form of a final audit report. Similar verification of actual costs shall be made for other contracts when cost incentives, price redeterminations, or cost-reimbursement elements are involved. Termination settlement proposals shall be submitted to the cost advisory group at the contracting office for review by the Office of Audit as prescribed by FAR 49.107. All such audits will be coordinated through the cost advisory group in the contracting office. Exceptions to these procedures are the quick close-out procedures as described in 1542.708 and Unit 2 of the EPA Acquisition Handbook.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1505—PUBLICIZING CONTRACT ACTIONS

Sec.
1505.000 Scope of part.

Subpart 1505.2—Synopses of Proposed Contract Actions

1505.202 Exceptions.
1505.203 Publicizing and response time.
1505.271 [Reserved].

Subpart 1505.5—Paid Advertisement [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8838, Mar. 8, 1984, unless otherwise noted.

1505.000 Scope of part.

This part provides instructions on publicizing contract opportunities and response time, instructions on information to include in the synopses of proposed contracts, instructions on publicizing orders under GSA schedule contracts, policy references relative to release of information, and procedures for obtaining information on previous Government contracts.

[50 FR 14357, Apr. 11, 1985]

Subpart 1505.2—Synopses of Proposed Contract Actions

1505.202 Exceptions.

The Contracting Officer need not submit the notice required by FAR 5.201 when the Contracting Officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

[60 FR 38505, July 27, 1995]

1505.203 Publicizing and response time.

(a) The Contracting Officer may, at his/her discretion under certain circumstances, elect to transmit a synopsis to the Commerce Business Daily (CBD) of a proposed contract action that falls within an exception to the synopsis requirement in FAR 5.202(a). For those contract actions, the Contracting Officer may provide for a lesser time period than the 15 days required by FAR 5.203(a) and the 30 days required by FAR 5.203 (c) or (d), and the 45 days required by FAR 5.203(e). The Contracting Officer must identify the basis for the lesser time periods for response in the synopsis.

(b) The authority for paragraph (a) does not extend to the synopsis of contract actions falling within the exception in FAR 5.202(a)(7), if to do so would disclose the originality of thought or innovativeness of the proposed research.

[50 FR 14357, Apr. 11, 1985, as amended at 62 FR 33572, June 20, 1997]

1505.271 [Reserved]

Subpart 1505.5—Paid Advertisement [Reserved]

PART 1506—COMPETITION REQUIREMENTS

Sec.
1506.000 Scope of part.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources [Reserved]

Subpart 1506.3—Other Than Full and Open Competition

1506.302–5 Authorized or required by statute.
1506.303–2 Content.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 50 FR 14357, Apr. 11, 1985, unless otherwise noted.

1506.000 Scope of part.

This part implements FAR part 6. It prescribes the Environmental Protection Agency policies and procedures in obtaining full and open competition in the acquisition process.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources [Reserved]

Subpart 1506.3—Other Than Full and Open Competition

1506.302–5 Authorized or required by statute.

(a) *Authority*. Section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) is cited as authority.

(b) *Application*. (1) The contracting officer may use other than full and open competition to acquire the services of experts for use in preparing or prosecuting a civil or criminal action under SARA whether or not the expert is expected to testify at trial. The contracting officer need not prepare the written justification under FAR 6.303 when acquiring expert services under the authority of section 109(e) of SARA. The contracting officer shall document the official contract file when using this authority.

(2) The contracting officer shall give notice to the Agency's Competition Advocate whenever a contract award is made using other than full and open competitition under this authority. The notice shall contain a copy of the contract and the summary of negotiations.

[53 FR 31872, Aug. 22, 1988]

1506.303–2 Content.

The documentation requirements in this section apply only to acquisitions processed using other than small purchase procedures. (Refer to 1513.170 for documentation for small purchase acquisitions).

(a) The initiating office shall prepare a written justification for other than full and open competition (JOFOC) that documents the facts and circumstances substantiating the infeasibility of full and open competition for each recommended limited sources or sole source acquisition when required by FAR 6.302.

(b) The recommendation shall be entitled ''Justification for Other Than Full and Open Competition'' and shall be signed at the programmatic Division Director or comparable office level prior to submission with the procurement request. The JOFOC shall contain the information prescribed in FAR 6.303–2 (a) and (b).

(c) If unusual and compelling urgency (see FAR 6.303–2) is a basis for the JOFOC, then the following applies. Explain the circumstances that led to the need for an urgent contractual action. Explain why the requirement could not have been processed in sufficient time to permit full and open competition. It should be noted that the existence of legislation, court order, or Presidential mandate is not, of itself, a sufficient basis for a JOFOC. However, the circumstances necessitating legislation, court order, or Presidential mandate may justify contractual action on an other than full and open competition basis.

(d) If the proposed acquisition has been synopsized in accordance with the applicable requirements in FAR subpart 5.2, the Contracting Officer must incorporate the evaluation of responses to the synopsis in the JOFOC. (See 1506.371(d) for contents of the evaluation document).

[50 FR 14357, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985]

PART 1508—REQUIRED SOURCES OF SUPPLY

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1508.8—Acquisition of Printing and Related Supplies

1508.870 Contract clause.

Contracting Officers shall insert the contract clause at 1552.208–70, Printing, in all contracts which require printing, duplication, binding, reproduction, and related services and are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

[49 FR 8838, Mar. 8, 1984]

PART 1509—CONTRACTOR QUALIFICATIONS

Sec.
1509.000 Scope of part.

Subpart 1509.1—Responsible Prospective Contractors

1509.105 Procedures.

Subpart 1509.170—Contractor Performance Evaluations

1509.170–1 Scope of subpart.
1509.170–2 Applicability.
1509.170–3 Purpose.
1509.170–4 Procedures.

Subpart 1509.4—Debarment, Suspension, and Ineligibility

1509.403 Definitions.
1509.404 Parties excluded from Federal procurement and nonprocurement programs.
1509.406 Debarment.
1509.406–3 Procedures.
1509.407 Suspension.
1509.407–3 Procedures.

Subpart 1509.5—Organizational Conflicts of Interest

1509.500 Scope of subpart.
1509.502 Applicability.
1509.503 Waiver.
1509.505–4 Obtaining access to proprietary information.
1509.505–70 Information sources.
1509.507–1 Solicitation provisions.
1509.507–2 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8839, Mar. 8, 1984, unless otherwise noted.

1509.000 Scope of part.

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

Subpart 1509.1—Responsible Prospective Contractors

1509.105 Procedures.

Subpart 1509.170—Contractor Performance Evaluations

1509.170–1 Scope of subpart.

This subpart establishes EPA policy and procedures for evaluation of contractor performance.

1509.170–2 Applicability.

The provisions of this subpart apply to: (a) All contracts for research and development and for services other than management consulting services when the contract amount is $25,000 and above, and (b) all contracts for management consulting services, without regard to dollar value. FAR 36.201 and 36.604 provide detailed instructions for conduct of construction and architect-engineering Contractor performance evaluation.

1509.170–3 Purpose.

The purpose of this subpart is to: (a) Provide an orderly and uniform method of determining and recording the effectiveness of contractors in meeting contractual obligations; (b) emphasize to contractors the importance of satisfying contractual obligations; (c) create within the EPA a record of contractor performance and a means for considering this record in future acquisition actions; and (d) provide a system for identifying contractors with a history of poor performance.

1509.170–4 Procedures.

(a) *Use and preparation of forms.* EPA Form 1900–26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900–27, Project Officer's Evaluation of Contractor Performance, shall be prepared at the completion of the technical effort of the contract or purchase order to record the effectiveness of contractors in meeting contractual obligations. Forms shall be prepared in accordance with the instructions printed on the back of each form.

(b) *Responsibilities for preparation of forms.*

(1) The Policy Training and, Oversight Division (PTOD), Office of Acquitition Management, 3802F shall originate EPA Form 1900–26 and EPA Form 1900–27 within two weeks after the completion of the technical effort of the contract or purchase order.

(2) The Contracting Officer administering the contract shall prepare the business evaluation on EPA Form 1900–26; forward the original of the form to the Quality Assurance Branch, Office of Management 3802F, Washington, DC

20460; and retain a copy in the contract file.

(3) The Project Officer with technical responsibility for the contract shall prepare the technical evaluation on EPA Form 1900–27; forward the form to the Quality Assurance Branch, Office of Acquisition Management, 3802F, Washington, DC 20460; and forward a copy to the Contracting Officer for insertion in the contract file.

(c) *Unsatisfactory performance ratings.* The Contracting Officer shall apprise the Contractor of any overall rating of ''unsatisfactory.'' If the Contractor submits comments in response to such a rating, the evaluator shall include the comments as an attachment to the evaluation form. Evaluators shall make appropriate changes to the performance evaluations if any are warranted by the Contractor's comments.

(d) *Review of evaluations.* The Quality Assurance Branch, Office of Acquisition Management, shall review each evaluation as it is received, and compare it with recent evaluations submitted for the same Contractor. If the Quality Assurance Section discerns a pattern of unsatisfactory performance, it will notify the appropriate Contracting Officer for his/her possible action, which may include referral of the matter in accordance with 1509.406–3(a)(1).

(e) *Filing of forms.* Evaluation forms shall be filed in the Contractor performance evaluation files maintained by the Quality Assurance, Office of Acquisition Management.

(f) *Release of ratings.* Information on Contractors' performance ratings may be obtained by contacting the Quality Assurance Branch, Office of Acquisition Management. Contractors' performance ratings determined by the Contracting Officer and the Project Officer may be released to other Government agencies at their specific written request, and on condition that the information will not be made available outside of the Government. Requests for information on the ratings from individuals or entities outside of the Government shall be processed in accordance with the Freedom of Information Act and 40 CFR part 2.

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 59 FR 18976, Apr. 21, 1994]

Subpart 1509.4—Debarment, Suspension, and Ineligibility

1509.403 Definitions.

The Director, Grants Administration Division, is designated the ''debarring official'' and the ''suspending official'' as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405–1(b), 9.405–2, 9.406–1(c), and 9.407–1(d).

1509.404 Parties excluded from Federal procurement and nonprocurement programs.

The Director, Office of Grants and Debarment (or designee) is responsible for notifying GSA in accordance with FAR 9.404(c).

[61 FR 57337, Nov. 6, 1996]

1509.406 Debarment.

1509.406–3 Procedures.

(a) *Investigation and referral*—(1) *Contracting Officer responsibility*. (i) When contracting personnel discover information which indicates that a cause for debarment or suspension may exist, they shall promptly report such information by memorandum to the cognizant Chief of the Contracting Office. Purchasing agents in the small purchase activities which do not come under the cognizance of the Headquarters, Research Triangle Park (RTP), or Cincinnati contracting offices shall report such information by memorandum directly to the Head of the Contracting Activity (HCA).

(ii) Contracting Officers shall review the GSA consolidated list to ensure that the Agency does not solicit offers from, award contracts to, or consent to subcontract with listed contractors.

(2) *Chief of the Contracting Office responsibility*. When the Chief of the Contracting Office determines that sufficient information exists to support the reasonable belief that a cause for debarment or suspension may exist, such information shall be promptly reported by memorandum to the HCA. The memorandum to the HCA may be a cover memorandum which forwards the Contracting Officer's memorandum and provides the Chief of the Contracting Office's assessment of the information,

any investigative report or audit, and any additional information he/she has discovered.

(3) *HCA responsibility*. Upon receipt of a report of a suspected debarment or suspension situation, the HCA or the designee shall take the following actions:

(i) Notify the Debarring Official that investigation of a potential debarment has been initiated.

(ii) Review the reported information.

(iii) Investigate as necessary to verify or develop additional information. Request investigative support from the EPA Inspector General when appropriate.

(iv) Refer the matter to the Debarring Official for consideration of debarment; or recommend to the Debarring Official that the matter be closed without further action because the facts do not constitute a cause for debarment.

(v) Obtain legal counsel's opinion on referrals or recommendations made to the Debarring Official.

(vi) Notify EPA Contracting Officers of those Contractors who are ineligible for solicitation, award, or subcontracting but who do not appear on the GSA Consolidated List; e.g., those who are ineligible based on a settlement reached by the Debarring Official under which the Contractor has agreed to voluntarily exclude itself from participation in Government contracting/subcontracting for a specified period or because of a Notice of Proposal to Debar.

(4) *Debarring Official's responsibility*. The Debarring Official shall:

(i) Review referrals from the HCA together with the HCA's recommendations, if any, and determine whether further consideration by the Debarring Official is warranted and take such actions as are required by FAR subpart 9.4;

(ii) Obtain the HCA's recommendation prior to reaching a voluntary exclusion settlement with a Contractor in lieu of debarment;

(iii) Promptly notify the HCA of Contractors with whom a settlement in lieu of debarment has been reached under which the Contractor voluntarily excludes itself from or restricts its participation in Government contracting/subcontracting for a specified period; and of Contractors who have received a Notice of Proposal to Debar.

1509.407 Suspension.

1509.407–3 Procedures.

The procedures prescribed in 1509.406–3(a) shall be followed under conditions which appear to warrant suspension of a Contractor.

Subpart 1509.5—Organizational Conflicts of Interests

1509.500 Scope of subpart.

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

[49 FR 8839, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1509.502 Applicability.

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

1509.503 Waiver.

The Head of the Contracting Activity may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in accordance with FAR 9.503. The Assistant General Counsel for Contracts and Information Law shall be consulted on such waiver requests.

[49 FR 8839, Mar. 8, 1984, as amended at 61 FR 29316, June 10, 1996]

1509.505–4 Obtaining access to proprietary information.

Contractors gaining access to confidential business information of other

companies in performing advisory services for EPA shall comply with the special requirements of 40 CFR part 2 and the provisions of their contracts relating to the treatment of confidential business information.

1509.505–70 Information sources.

(a) *Disclosure.* Prospective EPA Contractors responding to solicitations or submitting unsolicited proposals shall provide information to the Contracting Officer for use in identifying, evaluating, or resolving potential organizational conflicts of interest. The submittal may be a certification or a disclosure, pursuant to paragraph (a) (1) or (2) of this section.

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

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

(b) *Failure to disclose information.* Any prospective contractor failing to provide full disclosure, certification, or other required information will not be eligible for award. Nondisclosure or misrepresentation of any relevant information may also result in disqualification from award, termination of the contract for default, or debarment from Government contracts, as well as other legal action or prosecution. In response to solicitations, EPA will consider any inadvertent failure to provide disclosure certification as a ''minor informality'' (as explained in FAR 14.405); however, the prospective contractor must correct the omission promptly.

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

[49 FR 8839, Mar. 8, 1994. Redesignated at 59 FR 18619, Apr. 19, 1994]

1509.507–1 Solicitation provisions.

(a) *Advance notice of limitations.* The Contracting Officer shall alert prospective contractors by placing a notice in the solicitation whenever a particular acquisition might create an organizational conflict of interest. The notice will:

(1) Include the information prescribed in (FAR) 48 CFR 9.507–1;

(2) Refer prospective contractors to this subpart; and

(3) Require proposers to disclose relevant facts concerning any past, present, or currently planned interests relating to the work described in the solicitation.

(b) *Required solicitation provision.* The Contracting Officer shall include the provisions at 1552.209–70 and 1552.209–72 in all solicitations, except where the following applies:

(1) An Organizational Conflict of Interest provision is drafted for a particular acquisition (see Section 1509.507–1(a));

(2) When the procurement is with another Federal agency (however, the provision is included in solicitations issued under the Small Business Administration's (SBA) 8(a) program); and

(3) When the procurement is accomplished through simplified acquisition procedures, use of the provision is optional.

[49 FR 8839, Mar. 8, 1994. Redesignated and amended at 59 FR 18619, Apr. 19, 1994; 61 FR 57337, Nov. 6, 1996; 62 FR 33572, June 20, 1997]

1509.507–2 Contract clause.

(a) The Contracting Officer shall include the clause at 1552.209–71 in all contracts in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(b) The Contracting Officer shall include the clause at 1552.209–73 in all solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in small purchases for Superfund work.

(c) The Contracting Officer shall include the clause at 1552.209–74 or its alternates in the following solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures for Superfund work. The Contracting Officer shall include the clause at 1552.209–74 in all Alternative Remedial Contracting Strategy (ARCS) solicitations and contracts, except Site Specific solicitations and contracts. Alternate I shall be used in all Time Critical Rapid Response (TCRR) solicitations and contracts, except site specific solicitations and contracts. The term ''TCRR'' in the Limitation of Future Contracting clauses includes not only TCRR solicitations and contracts but Emergency Response Cleanup Services (ERCS) and other emergency type solicitations and contracts. TCRR pilot scale studies are included in the term ''treatability studies''. Alternate II shall be used in all Technical Assistance Team (TAT) solicitations and contracts. Alternate III shall be used in all Environmental Services Assistance Team (ESAT) solicitations and contracts. Alternate IV shall be used in all Technical Enforcement Support (TES) solicitations and contracts. Alternate V shall be used in all Superfund Headquarters Support solicitations and contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate V to reflect any unique limitations applicable to the program requirements. Alternate VI shall be used in all Site Specific solicitations and contracts.

(d) The Contracting Officer shall insert the clause at 1552.209–75 in Superfund solicitations and contracts in excess of the simplified acquisition threshold, where the solicitation or contract does not include (EPAAR) 48 CFR 1552.211–74, Work Assignments, Alternate I, or a similar clause requiring conflict of interest certifications during contract performance. This clause requires an annual conflict of interest certification from contractors when the contract does not require the submission of other conflict of interest certifications during contract performance. Contracts requiring annual certifications include: Site Specific contracts, the Contract Laboratory Program (CLP), and the Sample Management Office (SMO) contracts. The annual certification requires a contractor to certify that all organizational conflicts of interest have been reported, and that its personnel performing work under EPA contracts or relating to EPA contracts have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The annual certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period starting from the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

[59 FR 18619, Apr. 19, 1994, as amended at 61 FR 57337, Nov. 6, 1996]

PART 1511—DESCRIBING AGENCY NEEDS

Sec.
1511.000 Scope of part.
1511.011 Solicitation Provisions and Contract Clauses.
1511.011–70 Reports of work.
1511.011–71 [Reserved].
1511.011–72 Monthly progress report.
1511.011–73 Level of effort.
1511.011–74 Work assignments.
1511.011–75 Working files.
1511.011–76 Legal analysis.
1511.011–77 Final reports.
1511.011–78 Advisory and assistance services.
1511.011–79 Information resources management.

AUTHORITY: Sec. 205(c), 63 Sta. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 61 FR 57337, Nov. 6, 1996, unless otherwise noted.

1511.000 Scope of part.

This part implements FAR part 11 and provides policy and procedures for describing Agency needs.

1511.011 Solicitation Provisions and Contract Clauses.

1511.011–70 Reports of work.

Contracting Officers shall insert one of the contract clauses at 1552.211–70 when the contract requires the delivery of reports. Alternate I should be used to specify reports in contract schedule,

whereas the other clause should be used when reports are specified in the contract attachment.

1511.011–71 [Reserved]

1511.011–72 Monthly progress report.

Contracting Officers shall insert a contract clause substantially the same as the clause at 1552.211–72 when monthly progress reports are required.

1511.011–73 Level of effort.

The Contracting Officer shall insert the clause at 1552.211–73, Level of Effort, in term form contracts.

1511.011–74 Work assignments.

The Contracting Officer shall insert the contract clause at 1552.211–74, Work Assignments, in cost-reimbursement type term form contracts when work assignments are used. For Superfund contracts, except for contracts which require annual conflict of interest certificates (e.g., Site Specific contracts, the Contract Laboratory Program (CLP), and Sample Management Office (SMO) contracts), the Contracting Officer shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least 3 years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three years of records that may be searched.

1511.011–75 Working files.

Contracting Officers shall insert the contract clause at 1552.211–75 in all applicable EPA contracts where accurate working files on all work documentation is required in the performance of the contract.

1511.011–76 Legal analysis.

Contracting Officers shall insert the clause at 1552.211–76 when it is determined that the contract involves legal analysis.

1511.011–77 Final reports.

Contracting Officers shall insert the contract clause at 1552.211–77 when a contract requires both a draft and a final report.

1511.011–78 Advisory and assistance services.

Contracting Officers shall insert the contract clause at 1552.211–78 in all contracts for advisory and assistance services.

1511.011–79 Information resources management.

The Contracting Officer shall insert the clause at 1552.211–79, Compliance with EPA Policies for Information Resource Management, in all solicitations and contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1513—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
1513.000 Scope of part.

Subpart 1513.1—General

1513.170 Competition exceptions and justification for sole source simplified acquisition procedures.
1513.170–1 Contents of sole source justifications.

Subpart 1513.4—Imprest Fund

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.
1513.507 Clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 61 FR 57338, Nov. 6, 1996, unless otherwise noted.

1513.000 Scope of part.

This part prescribes EPA policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed the simplified acquisition threshold.

Subpart 1513.1—General

1513.170 Competition exceptions and justification for sole source simplified acquisition procedures.

1513.170–1 Contents of sole source justifications.

The program office submitting the procurement request must submit, as a separate attachment, a brief written statement in support of sole source acquisitions exceeding the micro-purchase threshold. The statement must cite one or more of the circumstances in FAR 6.302 and the necessary facts to support each circumstance. Although program offices may not cite the authority in FAR 6.302–7, the public interest may be used as a basis to support a sole source acquisition. If the acquisition has been synopsized as a notice of proposed sole source acquisition, the statement must include the results of the evaluation of responses to the synopsis.

Subpart 1513.4—Imprest Fund

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.

Contracting Officers may use the EPA Form 1900–8, Procurement Request/Order, in lieu of Optional Forms 347 and 348 for individual purchases prepared in accordance with the instructions printed on the reverse thereof (see 1553.213–70).

[61 FR 57338, Nov. 6, 1996. Redesignated at 62 FR 33572, June 20, 1997]

1513.507 Clauses.

(a) It is the general policy of the Environmental Protection Agency that Contractor or vendor prescribed leases or maintenance agreements for equipment shall not be executed.

(b) The Contracting Officer shall, where appropriate, insert the clause at 1552.213–70, Notice to Suppliers of Equipment, in orders for purchases or leases of automatic data processing equipment, word processing, and similar types of commercially available equipment for which vendors, as a matter of routine commercial practice, have developed their own leases and/or customer service maintenance agreements.

PART 1514—SEALED BIDDING

Subpart 1514.2—Solicitation of Bids

Sec.
1514.201 Preparation of invitations for bids.
1514.201–6 Solicitation provisions.
1514.201–7 Contract clauses.
1514.205 Solicitation mailing lists.

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.
1514.406 Mistakes in bids.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8843, Mar. 8, 1984, unless otherwise noted.

Subpart 1514.2—Solicitation of Bids

1514.201 Preparation of invitations for bids.

1514.201–6 Solicitation provisions.

The Contracting Officer shall insert the solicitation provision at 1552.214–71, Contract Award-Other Factors-Sealed Bidding, in invitations for bids when it is appropriate to describe other factors that will be used in evaluating bids for award.

[50 FR 14359, Apr. 11, 1985, as amended at 61 FR 55118, Oct. 24, 1996]

1514.201–7 Contract clauses.

The CCO is authorized to waive the inclusion of the clauses at FAR 52.214–27 and 52.214–28, in accordance with FAR 14.201–7.

[55 FR 24579, June 18, 1990, as amended at 58 FR 18976, Apr. 21, 1994]

1514.205 Solicitation mailing lists.

When a solicitation and all amendments are posted on the Internet with a synopsis providing information as to how to access the solicitation and all amendments, the CO will need to maintain a mailing list of only those individuals requesting paper copies from the contract service center/branch. When possible, the CO should also build an electronic ''mailing list'' of companies downloading the solicitation from the Internet.

[49 FR 8843, Mar. 8, 1984, as amended at 62 FR 37148, July 11, 1997]

Subpart 1514.4—Opening of Bids and Award of Contract

1514.404 Rejection of bids.

1514.406 Mistakes in bids.

PART 1515—CONTRACTING BY NEGOTIATION

Sec.
1515.000 Scope of part.

Subpart 1515.4—Solicitation and Receipt of Proposals and Quotations

1515.403 Conditions for use.
1515.407 Solicitation provisions.
1515.413 Disclosure and use of information before award.

Subpart 1515.5—Unsolicited Proposals

1515.506 Agency procedures.
1515.507 Contracting methods.

Subpart 1515.6—Source Selection

1515.602 Applicability.
1515.604 Responsibilities and duties.
1515.604–70 Personal conflicts of interest.
1515.605 Evaluation factors.
1515.608 Proposal evaluation.
1515.609 Competitive range.
1515.612 Formal source selection.

Subpart 1515.8—Price Negotiation

1515.804 Cost or pricing data.

Subpart 1515.9—Profit

1515.900 Scope of subpart.
1515.902 Policy.
1515.905 Profit-analysis factors.
1515.970 EPA structured approach for developing profit or fee objectives.
1515.970–1 General.
1515.970–2 EPA structured system.
1515.970–3 Documentation.

Subpart 1515.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8843, Mar. 8, 1984, unless otherwise noted.

1515.000 Scope of part.

This part implements and supplements FAR part 15. It prescribes the

Environmental Protection Agency policies and procedures for contracting for supplies and services by negotiations.

Subpart 1515.4—Solicitation and Receipt of Proposals and Quotations

1515.403 Conditions for use.

Imprest funds may be used when the transaction does not exceed $500 ($750 under emergency conditions).

[61 FR 57338, Nov. 6, 1996. Redesignated at 62 FR 33572, June 20, 1997]

1515.407 Solicitation provisions.

(a) In addition to those provisions prescribed in FAR 15.407, the Contracting Officer shall insert in negotiated solicitations the provisions at—

(1) 1552.215–73, Instructions for the Preparation of Technical and Cost or Pricing Proposals (use Alternate I [Reserved]; Alternate II for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is on a Government facility; or Alternate III for cost-reimbursable, level of effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) and performance is not on a Government facility;

(2) 1552.215–76, General Financial and Organizational Information.

(b) The Contracting Officer shall insert the provision at 1552.215–74, Cost Proposal Instructions, in negotiated solicitations when cost or pricing data is required in an offeror's proposal and it is necessary to obtain the detailed cost data specified in the provision. While designed to obtain cost data for acquisitions under the Comprehensive Environmental Response, Compensation and Liability Act, the provision may be used in other negotiated solicitations.

[49 FR 8843, Mar. 8, 1984, as amended at 54 FR 36980, Sept. 26, 1989; 58 FR 45846, Aug. 31, 1993; 61 FR 47065, Sept. 6, 1996]

1515.413 Disclosure and use of information before award.

(a) Contracting Officers shall follow the Alternate II proposal evaluation procedures in FAR 15.413–2.

(b) After receipt of proposals, none of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest. In the event an outside evaluation is to be obtained, information in proposals or information concerning the number or identity of offerors shall be disclosed only to the extent authorized by and in accordance with the procedures of FAR 15.413–2(f) and these regulations, 1515.413.

(c) The Chief of the Contracting Office (CCO) is the designated official to make the decision as provided by FAR 15.413–2(f)(1).

(d) The Contracting Officer shall submit a written determination to the CCO whenever the use of FAR 15.413–2(f) procedures is contemplated. Following CCO approval, proposals may be released to non-Government employees for review and evaluation consistent with the provisions of FAR 15.413–2(f)(2)–(5).

(e) The following written certification and agreement shall be obtained from the non-Government evaluator prior to the release of any proposal to that evaluator:

CERTIFICATION ON THE USE AND DISCLOSURE OF PROPOSALS

RFP# _____

Offeror _____

1. I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage.

2. I agree to use any proposal information only for evaluation purposes. I agree not to copy any information from the proposal(s), to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the Source Evaluation Board assembled for

this acquisition or individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

_____

(Name and Organization)

_____

(Date of Execution)

(End of Certificate)

(f) The Contracting Officer shall place the Government Notice for Handling Proposals (FAR 15.413–2(e)) on the cover pages of all proposals upon their receipt.

[53 FR 38293, Sept. 30, 1988, as amended at 62 FR 33572, June 20, 1997]

Subpart 1515.5—Unsolicited Proposals

1515.506 Agency procedures.

The Director, Grants Administration Division (3903F), EPA, 401 M Street SW., Washington, DC 20460, is the Agency contact point established to coordinate the receipt and handling of unsolicited proposals.

[49 FR 8843, Mar. 8, 1984, as amended at 60 FR 21993, May 4, 1995]

1515.507 Contracting methods.

The Department of Housing and Urban Development-Independent Agencies Appropriation Act contains a requirement that none of the funds provided in the Act may be used for payment through grants or contracts to recipients that do not share in the cost of conducting research resulting from proposals that are not specifically solicited by the Government. Accordingly, contracts which result from unsolicited proposals shall provide for the Contractor to bear a portion of the cost of performance for work subject to the Act. However, where there is no measurable gain to the performing organization, cost sharing is not required.

Subpart 1515.6—Source Selection

1515.602 Applicability.

FAR subpart 15.6 and this subpart apply to all competitive negotiated acquisitions in excess of $25,000, except architect engineering services which are covered in 1536.6.

[50 FR 14359, Apr. 11, 1985]

1515.604 Responsibilities and duties.

In addition to those cited in FAR 15.604, the following responsibilities and duties are assigned:

(a) *Source Selection Official.* The Source Selection Official (SSO) is the official responsible for overall management of the source selection process. Duties of the SSO include, but are not limited to, appointing members and chairpersons of the Source Evaluation Board and the Technical Evaluation Panel (TEP); and approving solicitation related documents. However, the Contracting Officer is responsible for approving amendments to solicitation documents. The SSO may waive in writing the requirement in 1515.612(a)(1)(v) for at least one member of the TEP to be an individual not involved in managing the current contract. The SSO also approves the competitive range determination and makes the source selection decision.

(b) *Source Evaluation Board.* The Source Evaluation Board (SEB) consists of a chairperson who is responsible for all of the procedural and administrative aspects of the SEB, and other specialists, e.g., technical, procurement, and financial, as may be deemed appropriate by the SSO. An attorney from the Office of General Counsel should serve in an advisory role to the SEB. The SEB makes recommendations to the SSO on selection of a contractor for award.

(c) *Technical Evaluation Panel (TEP).* The Program Office has the responsibility for developing the technical evaluation criteria and statement of work for the solicitation. The TEP has the responsibility for evaluating the technical aspects of the offerors' technical proposals. Based on the recommendation of the Program Office, the SSO has the discretion of assigning this evaluation responsibility to the Project Officer, if appropriate, or to the TEP. When offerors' past performance is evaluated as part of the technical proposal evaluation process, the past performance evaluation shall be

conducted by the TEP, or by the Contracting Officer and the Project Officer. Based on input from the Project Officer, the Contracting Officer has the discretion of assigning this responsibility to the TEP or to the Contracting Officer and Project Officer.

[49 FR 8843, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990; 59 FR 18976, Apr. 21, 1994; 61 FR 47065, Sept. 6, 1996; 62 FR 37148, July 11, 1997]

1515.604–70 Personal conflicts of interests.

(a) Only regular or special Government employees of EPA as defined in 40 CFR 3.102, or where appropriate, other Federal Government agencies, may participate in the evaluation and selection process. In the event an outside evaluation is to be obtained, non-Government employees may participate only if the procedures in FAR 15.413–2(f) and 1515.413 are followed.

(b) Each EPA employee (including special employees) engaged in source evaluation and selection is required to be familiar with the provisions of 40 CFR part 3 regarding personal conflicts of interests. The employee shall inform the Source Selection Official in writing if his/her participation in the source evaluation and selection process could be interpreted as a possible or apparent conflict of interest. The SSO shall relieve any EPA employee who has a conflict of interest of further duties in connection with the evaluation and selection process.

(c) Each EPA employee (including special employees (as defined by 1503.600–71 (b)) involved in source evaluation and selection is required to comply with the Office of Government Ethics ethics provisions at 5 CFR Part 2635.

[49 FR 8843, Mar. 8, 1984, as amended at 53 FR 38293, Sept. 30, 1988; 61 FR 47066, Sept. 6, 1996]

1515.605 Evaluation factors.

The evaluation factors that will be considered in making the source selection and their relative importance shall be included in ''Part IV, Section M, Evaluation Factors for Award,'' in each solicitation.

(a) The Contracting Officer shall insert the provisions at 1552.215–70, ''EPA Source Evaluation and Selection Procedures—Negotiated Procurement'' and either: the provision in 1552.215–71, ''Evaluation Factors for Award,'' where all evaluation factors other than cost or price when combined are significantly more important than cost or price; or the provision in Alternate I to 1552.215–71, where all evaluation factors other than cost or price when combined are significantly less important than cost or price; or the provision in Alternate II to 1552.215–71, where award will be made to the offeror with the lowest-evaluated cost or price whose technical proposal meets the minimum needs of the Government; or the provision in Alternate III where all evaluation factors other than cost or price when combined are approximately equal to cost or price. The Contracting Officer may use provisions substantially the same as 1552.215–71, Alternate I to 1552.215–71, Alternate II to 1552.215–71, or Alternate III to 1552.215–71 without requesting a deviation to the EPAAR.

(b) Technical evaluation criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b) of the provision at 1552.215–71, Alternate I, and Alternate III. If technical evaluation criteria are used in Alternate II, the criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b). When past performance is to be used as an evaluation factor, the Contracting Officer must develop criteria for evaluating past performance and include such criteria in section M of the solicitation.

(c) *Evaluation Methodologies.* Evaluation criteria may be developed using methodologies other than numerical scoring, e.g., adjectival ratings or color scoring. The relative importance of the evaluation criteria must be clearly identified in the solicitation. The Contracting Officer should identify and prepare evaluation criteria consistent with FAR 15.605.

[49 FR 8843, Mar. 8, 1984, as amended at 61 FR 47066, Sept. 6, 1996]

1515.608 Proposal evaluation.

(a) The initial technical evaluations of proposals shall be conducted in accordance with the following procedures.

(1) The evaluation of technical proposals (including past performance factors) shall be accomplished using the following scoring plan or one specifically developed for the solicitation, e.g., other numeric, adjectival or color rating systems. Contracting Officers may request that the TEP also indicate whether proposals are acceptable or unacceptable, and/or whether the offerors' responses to individual criteria are acceptable or unacceptable.

SCORING PLAN

Value	Descriptive statement
0	The factor is not addressed, or is totally deficient and without merit.
1	The factor is addressed, but contains deficiencies and/or weaknesses that can be corrected only by major or significant changes to relevant portions of the proposal, or the factor is addressed so minimally or vaguely that there are widespread information gaps. In addition, because of the deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the TEP about the offeror's ability to perform the required work.
2	Information related to the factor is incomplete, unclear, or indicates an inadequate approach to, or understanding of the factor. The TEP believes there is question as to whether the offeror would be able to perform satisfactorily.
3	The response to the factor is adequate. Overall, it meets the specifications and requirements, such that the TEP believes that the offeror could perform to meet the Government's minimum requirements.
4	The response to the factor is good with some superior features. Information provided is generally clear, and the approach is acceptable with the possibility of more than adequate performance.
5	The response to the factor is superior in most features.

(2) *Ranking.* The use of pre-established cut-off scores to determine the competitive range or the source to be selected is prohibited. Each member of the TEP shall independently evaluate and score each offer. The TEP shall develop a consensus opinion on the scores assigned to each offer. The averaging of individual TEP members' scores to arrive at an overall panel score is prohibited.

(3) The goal of the technical evaluation is to understand each offeror's proposal and to assess each proposal relative to the specified evaluation factors. The TEP report(s) should address any perceived strengths, as well as any perceived weaknesses or deficiencies, and risks associated with the offerors' performance. Scores may or may not change from the initial evaluation to the supplemental evaluation, depending on the offerors' response to interrogatories. The supplemental TEP report must explain the rationale for no change in score, as well as any decrease or increase in score as a result of the offerors' response to interrogatories.

(b) *Technical evaluation panel report of initial offers.* The TEP shall deliver their report to the Contracting Officer upon completion of the evaluation of initial offers.

(1) The TEP report shall include: (i) A detailed scoring of each offer received and a narrative summary of facts and findings of significant strengths, weaknesses, and risks associated with each offer. The narrative summary and the score must be consistent. Score sheets prepared by each individual panel member must be made available upon the Contracting Officer's request. For contracts valued at $500,000 or less, the Chairperson of the TEP may use the short form technical evaluation format (EPA Form 1900–61); and

(ii) Any interrogatories the Contracting Officer should submit to offerors to clarify their technical proposals to address any weaknesses, deficiencies, or questions associated with their technical proposals. The Contracting Officer may review the technical proposals and TEP evaluation, and submit any additional interrogatories deemed appropriate.

(2)(i) A statement that the respective technical evaluation panel members are free from actual or potential personal conflicts of interest, and are in compliance with the Office of Government Ethics ethics provisions at 5 CFR Part 2635.

(ii) Any information which might reveal that a offeror has an actual or potential organizational conflict of interest.

(3) The Contracting Officer may release the cost/price proposals to the entire TEP or solely to the TEP Chairperson, after the TEP has completed its evaluation of initial proposals. The TEP or Chairperson should evaluate cost/price proposals to determine

whether the offerors' cost/price proposals adequately reflect their technical proposals and the requirements of the solicitation, and demonstrate that the proposed price or cost provides an adequate understanding of the requirements of the solicitation. Any inconsistencies between the proposals and the solicitation requirements should be identified. Any inconsistencies between the cost and technical proposals should also be identified.

(c) *Safeguarding information.* The following procedures are prescribed for protecting source selection information.

(1) Offerors' identities, offer contents, and prices shall be treated with the utmost discretion to avoid compromising the evaluation results or giving any offeror an unfair competitive advantage. Any questions regarding the receipt and distribution of offers, status of the proceedings, or other matters shall be referred to the Contracting Officer or designated contract specialist.

(2) After receipt of proposals, the contract specialist shall serially number all proposal copies received, distribute the required number of proposal copies to the TEP and BEP, and be responsible for the collection and final disposal of proposal copies. The panel chairpersons shall maintain a log of proposal distribution within the TEP and BEP. The contract specialist shall destroy all excess copies of proposals in a timely manner. The original copy of each unsuccessful proposal should be retained by the contract specialist as a reference in conducting debriefings. A minimum of two copies of the successful proposal should be retained (contract file copy/Project Officer file copy) for reference in administering the contract. Final disposition of the file shall be accomplished in accordance with FAR subpart 4.8, and the EPA ''Records Management Manual.''

(d) *Rejection of proposals.* The Competition Advocate is authorized to make the determination in FAR 15.608(b).

[49 FR 8843, Mar. 8, 1984, as amended at 50 FR 14359, Apr. 11, 1985; 59 FR 18976, Apr. 21, 1994; 60 FR 38505, July 27, 1995; 61 FR 29316, June 10, 1996; 61 FR 47066, Sept. 6, 1996; 62 FR 33572, June 20, 1997]

1515.609 Competitive range.

(a) The Contracting Officer shall prepare the determination of the competitive range for the subsequent approval of the SSO only if the determination is tantamount to selection, for example when there is only a single offeror in the competitive range or when there are only two proposals in the competitive range and multiple awards are anticipated. All determinations must be completely documented to support the competitive range decision.

(b)(1) When there is only one proposal in the competitive range, the Contracting Officer shall examine the solicitation to determine if it was unduly restrictive. As part of the discussion in the competitive range determination, the Contracting Officer shall address at a minimum, the following four factors: whether the requirement could have been broken up into smaller components; whether the solicitation provided adequate response time; whether the requirement could have been satisfied with reduced staffing levels (discussion may be combined with the first factor); and if applicable, whether the work required on-site could otherwise be performed at a contractor's facility, avoiding the cost and logistical implications of relocating employees. If it is determined that unduly restrictive requirements inhibited competition, the Contracting Officer shall consider appropriate changes to those requirements and cancellation and reissuance of the solicitation.

(2) In cases where only a single proposal has been received and a competitive range determination has not been prepared, the discussion of the reasons for receipt of the single proposal which otherwise would be contained in the competitive range determination shall be included in the source selection document. The discussion in the source selection document at a minimum shall address the factors referenced in paragraph (b)(1) of this section. If it is determined that unduly restrictive requirements inhibited competition, the Contracting Officer shall consider appropriate changes to those requirements and cancellation and reissuance of the solicitation.

(3) The Contracting Officer shall provide a copy of the competitive range

determination or source selection document to the Competition Advocate after approval of the determination or document by the designated Source Selection Official.

[49 FR 8843, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990; 59 FR 18976, Apr. 21, 1994; 61 FR 47067, Sept. 6, 1996; 62 FR 33572, June 20, 1997]

1515.612 Formal source selection.

(a) *Responsibilities for evaluation and selection.* The Source Selection Official (SSO) shall appoint the SEB, TEP, members prior to issuance of the solicitation to allow the members to participate in the development and review of the solicitation document. Appointments should be recommended in the source selection plan prepared by the Contracting Officer in accordance with FAR 15.612(c). Individuals involved in the evaluation and selection process shall be at the levels specified below.

(1) *Acquisitions having a potential value exceeding $15,000,000 ($25,000,000 for ADP and Superfund):*

(i) SSO—CCO

(ii) SEB Chairperson—Branch Chief or as otherwise designated by the CCO.

(iii) SEB Membership—The SSO will determine the organizational levels of the individuals to serve on the SEB.

(iv) TEP Chairperson—The SSO will determine, based on the recommendation of the requesting program office, the Chairperson of the TEP. For recompetes or follow-on contracts, the Chairperson should normally not be the incumbent contract's Project Officer.

(v) TEP Membership—At least two members, in addition to the Project Officer, who are knowledgeable of the procurement's technical aspects. If the procurement is a follow-on to an existing contract, at least one of the TEP members should be someone who is not involved in managing the current contract, preferably from outside of the program division which originated the requirement. See 1515.604(a) for waiver of this requirement.

(2) Acquisitions having a potential value exceeding $5,000,000 to $25,000,000:

(i) SSO—To be determined by the Chief of the Contracting Office, unless otherwise restricted in his/her delegation of procurement authority.

(ii) SEB—An SEB need be established only when requested by the program office or determined necessary by the SSO. The SSO shall determine the organizational levels of the individuals to serve on the SEB.

(iii) TEP chairpersons and memberships shall be constituted as in paragraph (a)(1) (iv) and (v) of this section.

(3) Acquisitions having a potential value of $5,000,000 or less:

(i) SSO—The CO.

(ii) SEB—An SEB may be established only when requested by the program office or determined necessary by the SSO. The SSO shall determine the organizational levels of the individuals to serve on the SEB.

(iii.) TEP—chairpersons and memberships shall be constituted as in paragraph (a)(1) (iv) and (v) of this section. At the request of the program office, it may only be the PO.

(b) *Source selection decision*—(1) *Source Evaluation Board Report.* In procurements where an SEB is convened, the SEB shall provide the SSO with a report on its findings. The report shall be submitted after completion of discussions or full negotiations, depending on the source selection method employed, and shall include:

(i) A description of the acquisition;

(ii) A summary of the significant strengths, weaknesses, and risks associated with each offer still in the competitive range. This summary shall generally be an independent assessment of the facts and findings appearing in the TEP and BEP reports. The SEB report contains recommendations for selection; and

(iii) A statement that the SEB members are free from actual or potential personal conflicts of interest.

(2) *Source selection.* (i) The Contracting Officer shall prepare the source selection decision for the SSO's subsequent approval. The decision shall document the consideration given to price or cost, technical merit, and other factors contained in the solicitation. These other factors (e.g., record of prior performance, the offeror's subcontracting plan, etc.) may be used as the unscored discriminating elements for determining the selection of a

source between two otherwise substantially equal offers from both a cost and technical standpoint.

(ii) The SEB report to the SSO may serve as the source selection decision provided the recommendation of the SEB is accepted by the SSO and the SEB report includes the information required by 1515.612(b)(2)(i).

(c) *Source Selection Plan*. The CO must describe the scoring system to be used in evaluating the proposals if the numerical scoring system described at 1515.608(a)(1) is not used.

[49 FR 8843, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990; 59 FR 18976, Apr. 21, 1994; 60 FR 21993, May 4, 1995; 61 FR 47067, Sept. 6, 1996; 62 FR 37148, July 11, 1997]

Subpart 1515.8—Price Negotiation

1515.804 Cost or pricing data.

Subpart 1515.9—Profit

1515.900 Scope of subpart.

This subpart implements FAR subpart 15.9 and prescribes the EPA structured approach for determining profit or fee prenegotiation objectives.

1515.902 Policy.

(a) *EPA structured approach*. FAR 15.902 requires that agencies use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis. The structured approach prescribed in 1515.970 shall be used by EPA Contracting Officers in developing a prenegotiation profit or fee objective except as provided in paragraph (b)(1) of this section. The purpose of the structured approach is:

(1) To provide a standard method of evaluation;

(2) To ensure consideration of all relative factors;

(3) To provide a basis for documentation and explanation of the profit negotiation objective;

(4) To allow Contractors to earn profits commensurate with the assumption of risk;

(5) To reward Contractors who provide their own facilities, financing and personnel; and

(6) To reward Contractors who undertake more difficult work requiring higher risks.

(b)(1) *Other methods*. Contracting Officers may use methods other than those prescibed in 1515.970 for estabishing profit or fee objectives under the following circumstances.

(i) Architect-engineering contracts;

(ii) Personal or professional service contracts;

(iii) Management contracts, e.g., for maintenance or operation of Government facilities;

(iv) Termination settlements;

(v) Engineering services, labor-hour, time and materials contracts which provide for payment on a man-hour, man-day, or man-month basis, and where the contribution by the Contractor constitutes the furnishing of personnel rather than the output of an integrated research, engineering, or manufacturing operation;

(vi) Construction contracts; and

(vii) Cost-plus-award-fee contracts.

(2) Generally, it is expected that such methods will:

(i) Provide the Contracting Officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under ''Profit Factors,'' and

(ii) Serve as a basis for documentation of the objective.

(c) Under unusual circumstances, the CCO may specifically waive the requirement for the use of the guidelines. Such exceptions shall be justified in writing and authorized only in situations where the guidelines method is determined to be unsuitable.

(d) *Limitations*. In the event that any of the methods used would result in establishing a fee objective in violation of limitations established by statute (see FAR 15.903(d), the maximum fee objective shall be the percentage allowed pursuant to such limitations. No administrative ceilings on profits or fees shall be established.

[49 FR 8843, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 55 FR 24579, June 18, 1990; 59 FR 18976, Apr. 21, 1994]

1515.905 Profit-anaylsis factors.

Profit-analysis factors prescribed in the EPA structured approach in analyzing profit or fee include those prescribed by FAR 15.905–1 and additional factors authorized by FAR 15.905–2 to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.970–2.

1515.970 EPA structured approach for developing profit or fee objectives.

1515.970–1 General.

(a) It is the policy of the Agency to utilize profit to attract Contractors who possess talents and skills necessary to the accomplishment of the objectives of the EPA and to stimulate efficient contract performance. In negotiating profit/fee, it is necessary that all relative factors be considered, and that fair and reasonable amounts be negotiated which give the Contractor a profit objective commensurate with the nature of the work to be done, the Contractor's input to the total performance, and the risks assumed by the Contractor.

(b) To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the Contracting Officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and paragraph 1515.970–2(a)(1). Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort and the range of weights to be applied to each profit factor.

1515.970–2 EPA structured system.

(a)(1) *Profit factors.* The factors set forth below and the weighted ranges listed after each factor shall be used in all instances where the profit is to be specifically negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

Direct materials	Weight range (percent)
Purchases	1 to 4 .
Subcontracts	1 to 5 .
Equipment	1 to 2 .
Engineering labor	8 to 15 .
Engineering overhead	6 to 9 .
Manufacturing labor	5 to 9 .
Manufacturing overhead	4 to 7 .
Consultants	2 to 5 .
Other direct costs	1 to 3 .
General and administrative expenses	5 to 8 .
Contractor's assumptions of contract cost risk	0 to 6 .
Record of contractor's performance	−2 to +2.
Cost efficiency	
Management	
Extent of investment	
Reliability of cost estimates	
Inventive and developmental contributions	
Timely performance	
Small business participation	
Labor surplus area participation	
Extent of Government assistance	
Effect of competition	

(2) The Contracting Officer shall first measure the ''Contractor's Input to Total Performance'' by the assignment of a profit percentage within the designated weight ranges to each element of contract cost recognized by the Contracting Officer. Such costs are multiplied by the specific percentages to arrive at specific dollar profits. The amount calculated for facilities capital cost of money shall not be included as part of the cost base for the computation of profit or fee. A complete discussion of how facilities capital cost of money is determined and how it is applied and administered is set forth in FAR 31.205–10.

(3) After computing a total dollar profit for the Contractor's Input to Total Performance, the Contracting Officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any facilities capital cost of money, by the specific weight assigned to cost risk and performance. The Contracting Officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The profit or fee objective shall then be reduced by an amount equal to the amount of facilities capital cost of money allowed.

EPA Form 1900–2 shall be used to facilitate the calculation of this profit or fee objective.

(4) The weight factors shown are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Adjustments as explained below are to be made to reflect differences between profit and nonprofit organizations.

(i) For purposes of this subparagraph, nonprofit and not-for-profit organizations are defined as those business entities organized and operated exclusively for charitable, scientific or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 51 of the Internal Revenue Code.

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, the following adjustments are required:

(A) A special factor of −3 percent shall be assigned in all cases.

(B) The weighted ranges from ''Record of Contractor's Performance'' shall be halved, i.e., −1 percent to +1 percent rather than −2 percent to +2 percent.

(b) *Assignment of values to specific factors*—(1) *General.* In making his/her judgment of the value of each factor, the Contracting Officer should be governed by the definition, description, and purpose of the factors together with considerations for evaluating them as set forth herein.

(2) *Contractor's input to total performance.* This factor is a measure of how much the Contractor itself is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the Contractor's responsibility for contract performance, takes into account what resources are necessary and what the Contractor itself must do to accomplish a conversion of ideas and materials into the final item called for in the contract. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the Contractor's contribution to total performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct materials (purchased parts, subcontracted items, and other material).* Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The Contracting Officer shall also determine whether the Contractor will, for example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime Contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration should be given to the managerial and technical efforts necessary for the prime Contractor to administer subcontracts, and select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition. These determinations should be made for purchases of raw materials or basic commodities, purchases of processed material including all types of components of standard or near-standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end-item. In the application of this criterion, it should be recognized that the

contribution of the prime Contractor to its purchasing program might be substantial. This might be applicable in the management of subcontracting programs involving many sources, involving new complex components and instrumentation, incomplete specifications, and close surveillance by the prime Contractor's representative. Recognized costs proposed as direct material cost such as scrap charges shall be treated as material for profit evaluation. If intracompany transfers are accepted at price, in accordance with FAR 31.205–26(e), they should be excluded from the fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead. Normally, the lowest weight for direct material is 2 percent. A weighting of less than 2 percent and would be appropriate only in unusual circumstances when there is a minimal contribution by the Contractor in relation to the total cost of the material.

(ii) *Equipment.* It is the policy of the Agency to contract with individuals or firms who have special capabilities relative to the needs of the EPA. These capabilities include personnel with particular skills, or talents, and facilities (plant and equipment) necessary to complete the contract objectives. For the purpose of profit/fee analysis, equipment includes purchased items which are not to be an integral part of the final product. It would generally consist of production or test equipment. Where the EPA has to provide equipment to be Contractor either as Government-furnished equipment or Contractor-acquired equipment, appropriate profit/fee adjustments are necessary. Generally, a low weight range shall be assigned to the cost of such equipment (1 to 2 percent).

(iii) *Engineering labor and manufactuirng labor.* Analysis of the engineering labor and manufacturing labor items of the cost content of the contract should include evaluation of the comparative quality and level of the engineering talents, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination should be evaluated. Similarly, the variety of manufacturing labor skills required and the Contractor's manpower resources for meeting these requirements should be considered. For the purpose of profit/fee computation, manufacturing labor includes all nonprofessional labor, e.g., secretaries, technicians and carpenters, etc.

(iv) *Engineering overhead, manufacturing overhead, and general and administrative expenses.* (A) Where practicable, analysis of these overhead items of costs should include the evaluation of the make up of the expenses and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and hence given lesser profit consideration given the pools as a whole.

(B) It is not necessary that the Contractor's accounting system break down its overhead expenses within the classification of engineering overhead, manufacturing overhead, and general and administrative expenses. The Contractor whose accounting system only reflects one overhead rate on all direct labor need not change its system to correspond with all the above classifications. Where practicable, the Contracting Officer in his/her evaluation of such a Contractor's overhead rate should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, and general and administrative expenses and follow the appropriate evaluation technique.

When it is not practicable to evaluate the elements of the burden pool, the following rates should usually apply:

	Percent
Engineering overhead	7.5
Manufacturing overhead	5.5
Composite overhead	6.5
G&A	6.5

(C) It is not necessary for the Contracting Officer to make a separate profit evaluation of overhead expenses in connection with each procurement action for substantially the same product with the same contractor. Once an analysis of the profit weight to be assigned the overhead pool has been made, the weight assigned may be used for future procurements with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances.

(v) *Consultants.* Consultant costs, whether related to an individual consultant or consulting firm should be analyzed from the standpoint of what talents and skills the consultants have and how they will be used on the contract. The analysis should consider if the Contractor normally should be expected to have people with comparable expertise employed as full-time staff or if the contract requires skills not normally available on an employer-employee relationship. Where the Contractor is using consultants to perform services which could normally be expected to be done in-house, the rating factor should be generally below 2 to 3 percent. Where noted experts are retained for consultation on the contract, the rating will generally be higher.

(vi) *Other direct costs.* Items of costs, such as travel, subsistence, printing, and computers should generally be assigned a rating of 1 to 3 percent. The analysis of these costs should be similar to the analysis of direct materials.

(3) *Contractor's assumption of contract cost risk.* (i) It is the policy of the Administration to shift the risk of contract costs to the fullest extent practicable to contractors and to compensate them for the assumption of this risk. Evaluation of this risk requires a determination of:

(A) The degree of cost responsibility the Contractor assumes, (B) the reliability of the cost estimates in relation to the task assumed, and (C) the chance of the Contractor's success or failure. This factor is specially limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first and basic determination of the degree of cost responsibility assumed by the Contractor is related to the sharing of total risk of contract cost by the Government and the Contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the Contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. Such cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility, whereas such firm-fixed-price contract would reflect a complete assumption of cost responsibility. Therefore, in the first step of determining what value is to be given for the Contractor's assumption of contract cost risk, a zero rating shall be given to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating shall be given to a closely priced firm-fixed-price contract for a new, complex item.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the Contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the Contractor's task. The Contractor's task can be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the Contracting Officers objectively analyze the risk incident to proposed contracts and are willing to compensate Contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract justify a reward of less than 4 percent. Where proper contract type selection has been

made, the reward for risk by contract type would usually fall into the following percentages ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1.
Cost-plus-incentive-fee including cost incentives only.	1 to 2.
Cost-plus-incentive-fee including cost, performance, and delivery incentives.	2½ to 3.
Fixed-price-incentive including cost incentives only.	2 to 4.
Fixed-price-incentive including cost, performance, and delivery incentives.	3 to 5.
Prospective price determination	4 to 5.
Firm-fixed-price	4 to 6.

(A) These ranges may not be appropriate for all procurement situations. For instance, a fixed-price-incentive contract which is closely priced with a low ceiling price and a high incentive share may be tantamount to a firm-fixed-price contract. In this situation, the Contracting Officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The Contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of having partial performance under a letter contract. Under some circumstances, it may be reasoned that the total amount of cost risk has been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the Contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a Contractor has begun work under an anticipatory cost letter, the risk assumed is greater than the normal situation. To be equitable the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances, not just to the portion of costs incurred or percentages of work completed, prior to definitization.

(4) *Record of contract performance.* (i) The purpose of this factor is to motivate Contractors to improve their performance by rewarding them for excellent past performance and penalizing them for poor performance. Effective use of this factor requires that: (A) Reports on the various aspects of past performance be obtained and evaluated; and (B) this information be used in such a way as to motivate Contractors to improve their performance.

(ii) The evaluation of a particular Contractor's past performance and the importance placed upon the various subfactors listed below should be done in such a way as to motivate the Contractor to improve its performance. For instance, it might be pointless, in evaluating the performance of an autonomous division of a multidivisional contractor, to place emphasis on the performance of another autonomous division. Under such circumstances, the management of the division being evaluated might have no means of controlling the performance of the other division; therefore, emphasis on this performance by assigning a plus or minus rating to this factor might have a negative effect upon motivation to improve.

(iii) The weight to be assigned to this factor is arrived at on a judgment basis rather than an arithmetical averaging of weights assigned to all factors, depending upon the particular procurement situation, and the relative importance of the various factors. For example, an evaluation of a particular Contractor may indicate that its performance was satisfactory in most areas, except that it showed a preference for doing all work in-house and a disinclination to support Government small business objectives. In such a case the Contracting Officer may feel that the importance of these factors might justify the assignment of a lower overall rating for the record of past performance.

(iv) As stated above, the purpose of this factor is to reward a Contractor for excellent past performance and penalize it for poor performance. Therefore, performance which is rated as merely satisfactory should generally be assigned a weight of zero. However, a Contractor who has consistently met

contractual requirements may be awarded a plus.

(v) The following factors are to be considered in evaluating a Contractor's performance record:

(A) *Cost efficiency*. Low cost performance reflecting economic use of facilities and manpower, sound purchasing methods and subcontracting procedures, and effective inventory control are criteria for consideration. Improvement in efficiency through investment in plant modernization, past efficiencies, or lack thereof, effectiveness of the Contractor's make-or-buy program, purchasing and subcontracting system and inventory control should be evaluated.

(B) *Management*. Stability and competence of managment personnel, their willingness and ability to adjust company resources to meet peculiarly difficult and changing control requirements are criteria for consideration. The degree of cooperation by the Contractor with the objectives of the Government should be considered.

(C) *Extent of the contractor's investment*. The extent of a Contractor's total investment (i.e., both equity and borrowed capital) in the performance of the contract will be taken into consideration in determining the amount of the fee or profits.

(D) *Reliability of cost estimates*. Accuracy and reliability of previous cost estimates should be considered. Where substantial overruns have occurred, the Contracting Officer should attempt to determine the reasons.

(E) *Inventive and developmental contributions*. Extent and nature of Contractor-initiated and financed research, development, design work, product engineering, quality control, and manufacturing processes and techniques in the areas of concern to the EPA should be analyzed.

(F) *Timely performance*. The Contractor's performance record, considering excusable delays and the Contractor's efforts to overcome delays, should be analyzed.

(G) *Small business participation*. The Contractor's policies and procedures which energetically support Government small business programs pursuant to FAR subpart 19.7 should be given favorable consideration. Any unusual effort which the Contractor displays in subscontracting with small concerns, particularly for development type work likely to result in later production opportunities, and overall effectiveness of the Contractor in subcontracting with and furnishing assistance to small concerns should be considered. Conversely, failure or unwillingness on the part of the Contractor to support Government small business policies should be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(H) *Labor surplus area participation*. A similar review and evaluation (as required in paragraph (b)(4)(v)(G) of this section) should be given to the Contractor's policies and procedures supporting the Government's labor surplus area program pursuant to FAR part 20. Particular favorable consideration should be given to a Contractor who: (1) Makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (2) promotes maximum subcontractor utilization of certified-eligible concerns, as defined in FAR 20.101.

(I) *Extent of Government assistance*. The Government encourages its Contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. Where extraordinary financial, facilities, or other assistance must be furnished to a Contractor by the Government, such extraordinary assistance should have a modifying effect in determining what constitutes a fair and reasonable profit or fee.

(J) *Effect of competition*. When competition is effective and proposals are on a firm-fixed-price basis, the Contracting Officer normally need not consider in detail the amount of estimated profit included in a price. When effective competition is lacking, and in all cases where cost analysis is performed in accordance with FAR subpart 15.8, the estimate for profit, target profit or fee, or the proposed fixed fee should be analyzed in the same manner as all other elements of price.

[49 FR 8843, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1515.970–3 Documentation.

Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. Since the profit objective is the Contracting Officer's pre-negotiation evaluation of a total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective and from the prenegotiation detailed application of the weights to each element of the Contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the prenegotiation profit objective, as a result of changes to the Contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the record of negotiation prepared in accordance with FAR 15.808.

Subpart 1515.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes [Reserved]

PART 1516—TYPES OF CONTRACTS

Subpart 1516.3—Cost-Reimbursement Contracts

Sec.
1516.301–70 Payment of fee.
1516.303 Cost–sharing contracts.
1516.303–71 Definition.
1516.303–72 Policy.
1516.303–73 Types of cost–sharing.
1516.303–74 Determining the value of in–kind contributions.
1516.303–75 Amount of cost–sharing.
1516.303–76 Fee on cost–sharing contracts by subcontractors.
1516.303–77 Administrative requirements.
1516.307 Contract clauses.
1516.370 Solicitation provision.

Subpart 1516.4—Incentive Contracts

1516.404–2 Cost-plus-award-fee contracts.
1516.404–272 Definitions.
1516.404–273 Limitations.
1516.404–274 Waiver.
1516.405 Contract clauses.

Subpart 1516.5—Indefinite-Delivery Contracts

1516.505 Contract clauses.

Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1516.603 Letter Contracts.
1516.603–3 Limitations.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8852, Mar. 8, 1984, unless otherwise noted.

Subpart 1516.3—Cost-Reimbursement Contracts

1516.301–70 Payment of fee.

The policy of EPA for cost-reimbursement, term form contracts is to make provisional payment of fee (i.e. the fixed fee on cost-plus-fixed-fee type contracts or the base fee on cost-plus-award-fee type contracts) on a percentage of work completed basis, when such a method will not prove detrimental to proper contract performance. Percentage of work completed is the ratio of the direct labor hours performed in relation to the direct labor hours set forth in the contract in clause 1552.212–70, ''Level of Effort—Cost Reimbursement Term Contract.'' Provisional payment of fee will remain subject to withholding provisions, such as 48 CFR 52.216–8, Fixed Fee.

[56 FR 43711, Sept. 4, 1991]

1516.303 Cost-sharing contracts.

1516.303–71 Definition.

Cost-sharing is a generic term denoting any situation where the Government does not fully reimburse a contractor for all allowable costs necessary to accomplish the project under the contract. This term encompasses cost-matching and cost-limitations, in addition to cost-sharing. Cost-sharing does not include usual contractual limitations such as indirect cost ceilings in accordance with FAR 42.707, or ceilings on travel or other direct costs. Cost-sharing contracts may be required as a result of Congressional mandate.

[61 FR 14504, Apr. 2, 1996]

1516.303–72 Policy.

(a) The Agency shall use cost-sharing contracts where the principal purpose is ultimate commercialization and utilization of technologies by the private sector. There should also be a reasonable expectation of future economic benefits for the contractor and the Government beyond the Government's contract.

(b) Cost-sharing may be accomplished by a contribution to either direct or indirect costs, provided such costs are reasonable, allocable and allowable in accordance with the cost principles of the contract. Allowable costs which are absorbed by the contractor as its share of contract costs may not be charged directly or indirectly to the Agency or the Federal Government.

(c) Unsolicited proposals will be considered on a case-by-case basis by the Contracting Officer as to the appropriateness of cost-sharing.

[61 FR 14504, Apr. 2, 1996]

1516.303–73 Types of cost-sharing.

(a) Cost-sharing may be accomplished in various forms or combinations. These include, but are not limited to: cash outlays, real property or interest therein, personal property or services, cost matching, or other in-kind contributions.

(b) In-kind contributions represent non-cash contributions provided by the performing contractor which would normally be a charge against the contract. While in-kind contributions are an acceptable method of cost-sharing, should the booked costs of property appear unrealistic, the fair market value of the property shall be determined pursuant to 1516.303–74 of this chapter.

(c) In-kind contributions may be in the form of personal property (equipment or supplies) or services which are directly beneficial, specifically identifiable and necessary for the performance of the contract. In-kind contributions must meet all of the following criteria before acceptance.

(1) Be verifiable from the contractor's books and records;

(2) Not be included as contributions under any other Federal contract;

(3) Be necessary to accomplish project objectives;

(4) Provide for types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization; and

(5) Not be paid for by the Federal Government under any contract, agreement or grant.

[61 FR 14504, Apr. 2, 1996]

1516.303–74 Determining the value of in-kind contributions.

In-kind contributions accepted from a contractor will be addressed on a case-by-case basis provided the established values do not exceed fair market values.

(a) Where the Agency receives title to donated land, building, equipment or supplies and the property is not fully consumed during performance of the contract, the Contracting Officer should establish the property's value based on the contractor's booked costs (i.e., acquisition cost less depreciation, if any) at the time of donation. If the booked costs reflect unrealistic values when compared to current market conditions, the Contracting Officer may establish another appropriate value if supported by an independent appraisal of the fair market value of the donated property or property in similar condition and circumstances.

(b) The Contracting Officer will monitor reports of in-kind costs as they are incurred or recognized during the contract period of performance to determine that the value of in-kind services does not exceed fair market values.

(c) The value of any services or the use of personal or real property donated by a contractor should be established when necessary in accordance with generally accepted accounting policies and Federal cost principles.

[61 FR 14505, Apr. 2, 1996]

1516.303–75 Amount of cost-sharing.

(a) Contractors should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages

available to performers and the proximity of implementing commercialization, i.e., the higher the potential for future profits, the higher the contractor's share should be.

(b) Fee will not be paid to the contractor or any member of the contractor team (subcontractors and consultants) which has a substantial and direct interest in the contract, or is in a position to gain long term benefits from the contract. A vulnerability the Contracting Officer should consider in reviewing a prime contractor's request for consent to subcontract is whether subcontractors under prime cost-sharing contracts have a significant direct interest in the contract to gain long-term benefits from the contract.

(c) The Contracting Officer, with the input of technical experts, may consider the following factors in determining reasonable levels of cost sharing:

(1) The availability of the technology to competitors;

(2) Improvements in the contractor's market share position;

(3) The time and risk necessary to achieve success;

(4) If the results of the project involve patent rights which could be sold or licensed;

(5) If the contractor has non-Federal sources of funds to include as cost participation; and

(6) If the contractor has the production and other capabilities to capitalize the results of the project.

(d) A contractor's cost participation can be provided by other subcontractors with which it has contractual arrangements to perform the contract as long as the contractor's cost-sharing goal is met.

[61 FR 14505, Apr. 2, 1996]

1516.303–76 Fee on cost-sharing contracts by subcontractors.

(a) Subcontractors under prime cost-sharing contracts who do not have a significant direct interest in the contract or who are not in a position to gain long-term benefits from the contract may earn a fee.

(b) Contracting Officers should be alert to a potential vulnerability for the Government under cost-sharing contracts when evaluating proposed subcontractors or consenting to a subcontract during contract administration, where the subcontractor is a wholly-owned subsidiary of the prime. The vulnerability consists of the subsidiary earning a large amount of fee, which could be returned to the prime through stock dividends or other intercompany transactions. This could circumvent the objective of a cost-sharing contract.

[61 FR 14505, Apr. 2, 1996]

1516.303–77 Administrative requirements.

(a) The initial Procurement Request shall reflect the total estimated cost of the cost-sharing contract. The face page of the contract award shall indicate the total estimated cost of the contract, the Contractor's share of the cost, and the Government's share of the cost.

(b) The manner of cost-sharing and how it is to be accomplished shall be set forth in the contract. Additionally, contracts which provide for cost-sharing shall require the contractor to maintain records adequate to reflect the nature and extent of their cost-sharing as well as those costs charged the Agency. Such records may be subject to an Agency audit.

[61 FR 14505, Apr. 2, 1996]

1516.307 Contract clauses.

(a) The Contracting Officer shall insert the clause in 1552.216–71, Date of Incurrence of Cost, in cost-reimbursement contracts when an anticipatory cost letter has been issued on the project.

(b) The Contracting Officer shall insert the clause at 1552.216–74, Payment of Fee, in solicitations and contracts where a cost-reimbursement term form contract is contemplated, unless the Contracting Officer determines that such a provision would be detrimental to ensuring proper contract performance.

(c) The Contracting Officer shall insert a clause substantially the same as 48 CFR 1552.216–76, Estimated Cost and Cost-Sharing, in solicitations and contracts where the total incurred costs are shared by the contractor on a straight percentage basis. The Contracting Officer may develop other

clauses, as appropriate, following the same approach, but reflecting different cost-sharing arrangements negotiated on specific contract actions.

[49 FR 8852, Mar. 8, 1984, as amended at 56 FR 43711, Sept. 4, 1991; 61 FR 14505, Apr. 2, 1996; 61 FR 57338, Nov. 6, 1996]

1516.370 Solicitation provision.

The solicitation document shall state whether any cost-sharing is required, and may set forth a target level of cost-sharing. Although technical considerations are normally most important, the degree of cost-sharing may be considered in a selection decision when cost becomes a determinative factor in a selection decision.

[61 FR 14505, Apr. 2, 1996]

Subpart 1516.4—Incentive Contracts

1516.404–2 Cost-plus-award-fee contracts.

1516.404–272 Definitions.

(a) *Performance Evaluation Board (PEB).* Group of Government officials responsible for assessing the quality of contract performance and recommending the appropriate fee.

(b) *Fee Determination Official.* Individual responsible for reviewing the recommendations of the PEB and making the final determination of the amount of award fee to be awarded to the contractor.

[60 FR 43404, Aug. 21, 1995]

1516.404–273 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed ''above satisfactory'' or ''excellent'' for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

[60 FR 43404, Aug. 21, 1995]

1516.404–274 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (d) of 1516.404–273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the Procurement Policy Branch in the Office of Acquisition Management.

[60 FR 43404, Aug. 21, 1995]

1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216–70, Award Fee (SEPT 1995), in solicitations and contracts when a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216–75, Base Fee and Award Fee Proposal (SEPT 1995), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages in accordance with FAR 15.903(d).

[60 FR 43404, Aug. 21, 1995]

Subpart 1516.5—Indefinite-Delivery Contracts

1516.505 Contract clauses.

(a) The Contracting Officer shall insert the clause in 1552.216–72, Ordering—By Designated Ordering Officers, in indefinite delivery/indefinite quantity type solicitations and contracts.

(b) The Contracting Officer shall insert the clause in 1552.216–73, Fixed Rates for Services—Indefinite Delivery/Indefinite Quantity Contract, in solicitations and contracts to specify fixed rates for services.

Subpart 1516.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1516.603 Letter Contracts.

1516.603–3 Limitations.

The CCO is authorized to make the determination in FAR 16.603–3.

[55 FR 24580, June 18, 1990, as amended at 59 FR 18976, Apr. 21, 1994]

PART 1517—SPECIAL CONTRACTING METHODS

Subpart 1517.2—Options

Sec.
1517.204 Contracts.
1517.207 Exercise of options.
1517.208 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8854, Mar. 8, 1984, unless otherwise noted.

Subpart 1517.2—Options

1517.204 Contracts.

The CCO may approve a contract with a base contract period and option periods which total in excess of five (5) years, unless otherwise prohibited by statute.

[60 FR 12713, Mar. 8, 1995]

1517.207 Exercise of options.

(a) Unless otherwise approved by the Chief of the Contracting Office, contracts for services employing option periods shall require that a preliminary written notice of the Government's intention to exercise the option be furnished to the Contractor a minimum of sixty (60) calendar days prior to the date for the exercise of the option. Failure to provide such preliminary notice within the timeframe established in the contract waives the Government's right to unilaterally exercise the option and requires the negotiation of a bilateral contract modification in order to extend the period of performance, where such an extension is authorized.

(b) When the term of the service contract coincides with the fiscal year and delays in receipt of authority to obligate funds for the new fiscal year are anticipated, the Contracting Officer, if the contract so provides (see FAR 17.204(d)), may, within 60 days after the end of the fiscal year, unilaterally exercise an option to extend the term of the contract. The option may be exercised only if funds become available within the 60-day period. In the event that sufficient funding is not available within the 60 day period, the Government waives the right to exercise the option, thereby rendering any additional requirements subject to full and open competition requirements.

(c) The Contracting Officer, if the contract so provides, may, subject to the conditions in FAR 17.204(d), 32.703–2, and 32.705–1(a), exercise an option contingent upon the availability of funds. To exercise such an option, the contract must contain the clause in FAR 52.232–18, Availability of Funds. Under no circumstances shall any action be taken which could be construed as creating a legal liability on the part of the Government until a formal notice of availability of funds in the form of a contract modification has been issued by the Contracting Officer.

[49 FR 8854, Mar. 8, 1984, as amended at 50 FR 14359, Apr. 11, 1985]

1517.208 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the solicitation provision at 1552.217–70, Evaluation of Contract Options, in Requests for Proposals when options are included.

(b) The Contracting Officer shall insert the clause at 1552.217–71, Option To Extend the Term of the Contract—Cost-Type Contract, when applicable.

(c) The Contracting Officer shall insert the clause at 1552.217–72, Option To Extend the Term of the Contract—Cost-Plus-Award-Fee Contract, when applicable.

(d) The Contracting Officer shall insert the clause at 1552.217–73, Option for Increased Quantity—Cost-Type Contract, when applicable.

(e) The Contracting Officer shall insert the clause at 1552.217–74, Option for Increased Quantity—Cost-Plus-Award-Fee Contract, when applicable.

(f) The Contracting Officer shall insert the clause at 1552.217–75, Option To Extend the Effective Period of the Contract—Time and Materials or Labor Hour Contract, when applicable.

(g) The Contracting Officer shall insert the clause at 1552.217–76, Option To Extend the Effective Period of the Contract—Indefinite Delivery/Indefinite Quantity Contract, when applicable.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1519—SMALL BUSINESS PROGRAMS

Subpart 1519.2—Policies

Sec.
1519.201 Policy.
1519.201–71 Director of Small and Disadvantaged Business Utilization.
1519.201–72 Small and disadvantaged business utilization specialists.
1519.202–5 Data collection and reporting requirements.

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.
1519.503 Class set-aside for construction.

Subpart 1519.6—Certificates of Competency and Determinations of Eligibility [Reserved]

Subpart 1519.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

1519.705–2 Determining the need for a subcontract plan.
1519.705–4 Reviewing the subcontracting plan.
1519.705–70 Synopsis of contracts containing Pub. L. 95–507 subcontracting plans and goals.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8855, Mar. 8, 1984, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 1519 appear at 61 FR 57338, Nov. 6, 1996.

Subpart 1519.2—Policies

1519.201 Policy.

Each program's Assistant or Associate Administrator shall be responsible for developing its socioeconomic goals on a fiscal year basis. The goals shall be developed in collaboration with the supporting Chiefs of Contracting Offices and the local Small Business Specialist (SBS), and the Office of Small and Disadvantaged Business Utilization (OSDBU). The goals will be based on advance procurement plans and past performance. The goals shall be submitted to the Director, OSDBU, at least thirty (30) days prior to the start of the fiscal year.

[49 FR 8855, Mar. 8, 1984, as amended at 61 FR 57338, 57339, Nov. 6, 1996]

1519.201–71 Director of Small and Disadvantaged Business Utilization.

The Director, OSDBU, provides guidance and advice, as appropriate, to Agency program and contracts officials on small and small disadvantaged business programs. The Director, OSDBU, is the central point of contact for inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and the Congress, and shall advise the Administrator and staff of such inquiries as required. The Director, OSDBU, shall represent the Agency in the negotiations with the other Government agencies on small and small disadvantaged business matters.

[49 FR 8855, Mar. 8, 1984. Redesignated at 62 FR 57338, 57339, Nov. 6, 1997]

1519.201–72 Small and disadvantaged business utilization specialists.

(a) Small Business Specialists (SBS) shall be appointed in writing for each contracting office. The SBS will normally be appointed from members of staffs of the appointing authority. The SBS is administratively responsible directly to the appointing authority and, on matters relating to small and small disadvantaged business program activities, receives technical guidance from the Director, OSDBU. The appointing authorities are the Chiefs of the Contracting Offices.

(b) A copy of each appointment and termination of all SBS specialists shall be forwarded to the Director, OSDBU. In addition to performing the duties outlined in paragraph (c) of this section that are normally performed in the activity to which assigned, the SBS shall perform such additional functions as may be prescribed from time to time in furtherance of overall small and small disadvantaged business utilization program goals. The SBS may be appointed on either a full- or part-time basis; however, when appointed on a

part-time basis, the small business duty shall take precedence over collateral responsibilities.

(c) The SBS appointed pursuant to paragraph (a) of this section, shall perform the following duties as appropriate:

(1) Maintain a program designed to locate capable small business sources for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small and small disadvantaged business concerns on acquisition matters;

(3) Review all proposed solicitations in excess of the simplified acquisition threshold, assure that small business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendations for small business set-asides, or offers of requirements to the SBA for the 8(a) program, and complete EPA Form 1900–37, ''Record of Procurement Request Review,'' as appropriate:

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available.

(5) Review proposed contracts for possible breakout of items or services suitable for acquisition from small business and small disadvantaged business concerns;

(6) Advise small businesses with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(7) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(8) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs (see 1519.202–5);

(9) Make available to SBA copies of solicitations when so requested;

(10) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small or small disadvantaged business programs.

[49 FR 8855, Mar. 8, 1984, as amended at 55 FR 24579, June 18, 1990. Redesignated and amended at 61 FR 57338, 57339, Nov. 6, 1996]

1519.202–5 Data collection and reporting requirements.

(a) As required, monthly reports of factual information, covering acquisition actions and dollars awarded to small businesses, small disadvantaged businesses, women-owned small businesses, the Small Business Administration under the authority of section 8(a) of the Small Business Act, and information on actions and dollars made under small business set-asides shall be submitted by the Procurement and Contracts Management Division, to the Director, OSDBU.

(b) The Financial Management Division will submit to the Director, OSDBU, a copy of the Small Purchase Activity Report that shows by each EPA purchasing activity the following information (cumulative monthly) for small purchases:

(1) Total actions and dollar value of awards;

(2) Total actions and dollar value of awards to all businesses;

(3) Total actions and dollar value of awards to small businesses;

(4) Total actions and dollar value of construction awards to small businesses made by set-aside;

(5) Total actions and dollar value of small business awards made by set-asides, excluding set-asides for construction;

(6) Total actions and dollar value of awards made to the Small Business Administration pursuant to section 8(a) of the Small Business Act; and

(7) Total actions and dollar value of awards made to small disadvantaged businesses.

(c) The reports identified in paragraphs (a) and (b) of this section are to be submitted to the Director, OSDBU, no later than the 20th day following the end of the reporting period with the exception of the last report of the fiscal year which shall be submitted no

later than the 30th day following the end of the fiscal year.

Subpart 1519.5—Set-Asides for Small Business

1519.501 Review of acquisitions.

(a) If no Small Business Administration (SBA) representative is available, the Small Business Specialist (SBS) shall initiate recommendations to the Contracting Officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

(b) When the SBS has recommended that all, or a portion, of an individual acquisition or class of acquisitions be set aside for small business, the Contracting Officer shall promptly either: (1) Concur in the recommendation or (2) disapprove the recommendation, stating in writing the reasons for disapproval. If the Contracting Officer disapproves the recommendation of the SBS, the SBS may appeal to the appropriate appointing authority, whose decision shall be final.

[49 FR 8855, Mar. 8, 1984, as amended at 61 FR 57338, 57339, Nov. 6, 1996]

1519.503 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost between $10,000 and $1,000,000 shall be set-aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisitions in excess of $1,000,000 shall be considered on a case-by-case basis.

Subpart 1519.6—Certificates of Competency and Determinations of Eligibility [Reserved]

Subpart 1519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1519.705–2 Determining the need for a subcontract plan.

One copy of the determination required by FAR 19.705–2(c) shall be placed in the contract file and one copy provided the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1519.705–4 Reviewing the subcontracting plan.

In determining the acceptability of a proposed subcontracting plan, the Contracting Officer shall obtain advice and recommendations from the OSDBU, which shall in turn coordinate review by the Small Business Administration Procurement Center Representative (if any).

1519.705–70 Synopsis of contracts containing Pub. L. 95–507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95–507 subcontracting plans and goals.

[49 FR 8855, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

PART 1520—LABOR SURPLUS AREA CONCERNS

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1520.1—General [Reserved]

Subpart 1520.3—Labor Surplus Area Subcontracting Program [Reserved]

PART 1522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1522.1—Basic Labor Policies

Sec.
1522.103 Overtime.

Subpart 1522.6—Walsh-Healey Public Contracts Act

1522.608 Procedures.

Subpart 1522.8—Equal Employment Opportunity

1522.803 Responsibilities.
1522.804 Affirmative action programs.
1522.804–2 Construction.

Subpart 1522.10—Service Contract Act of 1965 [Reserved]

Subpart 1522.13—Special Disabled and Vietnam Era Veterans [Reserved]

Subpart 1522.14—Employment of the Handicapped [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8857, June 15, 1984, unless otherwise noted.

Subpart 1522.1—Basic Labor Policies

1522.103 Overtime.

Subpart 1522.6—Walsh-Healey Public Contracts Act

1522.608 Procedures.

Subpart 1522.8—Equal Employment Opportunity

1522.803 Responsibilities.

If the applicability of E.O. 11246 and implementing regulations are questioned, the Contracting Officer shall route the matter through the CCO to the EPA Office of Civil Rights.

[49 FR 8857, June 15, 1984, as amended at 55 FR 24579, June 18, 1990; 59 FR 18976, Apr. 21, 1994]

1522.804 Affirmative action programs.

1522.804–2 Construction.

Each contracting office having construction contract responsibility shall maintain a list of geographical areas subject to affirmative action requirements. The list can be obtained from the Office of Contract Compliance Programs, U.S. Department of Labor.

[49 FR 8857, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

Subpart 1522.10—Service Contract Act of 1965 [Reserved]

Subpart 1522.13—Special Disabled and Vietnam Era Veterans [Reserved]

Subpart 1522.14—Employment of the Handicapped [Reserved]

PART 1523—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

Subpart 1523.3—Hazardous Material and Material Safety Data

Sec.
1523.303 Contract clause.
1523.303–70 Protection of human subjects.
1523.303–71 Decontamination of Government-furnished property.

Subpart 1523.70—Energy–Efficient Computer Equipment

1523.7000 Background.
1523.7001 Policy.
1523.7002 Waivers.
1523.7003 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8857, Mar. 8, 1984, unless otherwise noted.

Subpart 1523.3—Hazardous Material and Material Safety Data

1523.303 Contract clause.

1523.303–70 Protection of human subjects.

Contracting Officers shall insert the contract clause at 1552.223–70 when the contract involves human test subjects.

1523.303–71 Decontamination of Government-furnished property.

Contracting Officers shall insert the contract clause at 1552.245–70, Decontamination of Government-Furnished Property, when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the clean-up of hazardous or toxic substances in the environment.

Subpart 1523.70—Energy-Efficient Computer Equipment

SOURCE: 61 FR 14506, Apr. 2, 1996, unless otherwise noted.

1523.7000 Background.

(a) Executive Order 12845 requires the Federal Government to purchase only microcomputers, including personal computers, monitors and printers, which meet ''EPA Energy Star'' requirements for energy efficiency. This equipment is often identified by the Energy Star™ logo and is capable of entering and recovering from an energy-efficient low power state.

(b) The EPA Energy Star Computer Program is a voluntary partnership effort with the computer industry to promote the introduction of energy-efficient personal computers, monitors, and printers which can reduce air pollution caused by utility power generation, and ease the burden on building air conditioning and electrical systems. The Energy Star Program is designed to be a self-certifying computer industry program, policed informally by the computer industry itself.

(c) FIRMR Bulletin C–35 (dated 11/19/93) describes procedures that will promote the acquisition of energy-efficient microcomputers and associated computer equipment.

1523.7001 Policy.

(a) The ''Energy Star'' Executive Order (E.O. 12845) applies to the following equipment:

(1) Personal Computers (stand-alone).

(2) Personal Computers (end-user on network).

(3) Notebook and other portable computers.

(4) PC printers - laser, inkjet or dot matrix (stand-alone or networked).

(5) High-speed printers used on a PC network (less than approximately 20 pages per minute).

(6) Monitors (CRT or Flat-panel LCD).

(b) ''Energy Star'' requirements do not apply to the following equipment:

(1) Workstations.

(2) File servers.

(3) Mainframe equipment.

(4) Minicomputers.

(5) High-speed printers used with mainframe computers (30 or more pages per minute).

(6) Mainframe or ''dumb'' terminals.

(7) X-terminals.

(c) All new acquisitions for microcomputers, including personal computers, monitors, and printers, shall contain specifications which meet EPA Energy Star requirements for energy efficiency unless a waiver has been obtained in accordance with internal Agency procedures. The EPA Energy Star requirement applies in instances where the Contracting Officer authorizes the contractor to acquire property in accordance with FAR 45.302–1.

(d) The Energy Star requirement also applies to all applicable equipment ordered from GSA Schedule Contracts, open market buys, and Bankcard purchases.

1523.7002 Waivers.

(a) There are several types of computer equipment which technically fall under the current Energy Star Program, but for which EPA established blanket waivers because Energy Star compliant versions of this equipment were unavailable in the marketplace. Blanket waivers apply to the following types of equipment:

(1) LAN servers, including file servers; application servers; communication servers; including bridges and routers;

(2) UNIX RISC based processors with their high-end monitors;

(3) Large LAN printers (greater than 19 pages/minute output); and

(4) Scientific computing equipment which is used for real-time data acquisition and which, if subjected to a power down mode, would jeopardize the research project.

(b) It is anticipated that there will be Energy Star models of this equipment in the future, but in the near term EPA will not specify Energy Star qualifications when purchasing the items listed in this section.

1523.7003 Contract clause.

The Contracting Officer shall insert a clause substantially the same as 48 CFR 1552.239–103, Acquisition of Energy Star Compliant Microcomputers, Including Personal Computers, Monitors, and Printers, in all solicitations and contracts for the acquisition of microcomputers, including personal computers, monitors and printers. The Contracting Officer shall also insert the clause in solicitations and contracts where the Contracting Officer authorizes the contractor to acquire property in accordance with FAR 45.302–1.

PART 1524—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1524.1—Protection of Individual Privacy

1524.104 Solicitation provisions.

The Contracting Officer shall insert the provision at 1552.224–70, Social Security Numbers of Consultants and Certain Sole Proprietors and Privacy Act Statement, in all solicitations.

[49 FR 8858, Mar. 8, 1984]

Subpart 1524.2—Freedom of Information Act [Reserved]

PART 1525—FOREIGN ACQUISITION

Subpart 1525.1—Buy American Act—Supplies [Reserved]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1527—PATENTS, DATA, AND COPYRIGHTS

Subpart 1527.4—Rights in Data and Copyrights

Sec.
1527.404 Basic rights in data clause.
1527.409 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Subpart 1527.4—Rights in Data and Copyrights

1527.404 Basic rights in data clause.

The Contracting Officer shall insert in the *Limited Rights Notice* when using Alternate II of FAR 52.227–14 the following purposes for disclosure of limited data outside the Government.

(a) Use (except for manufacture) by support service contractors;

(b) Evaluation by nongovernment evaluators;

(c) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part, for information and use in connection with the work performed under each contract;

(d) Emergency repairs or overhaul work;

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

[55 FR 48623, Nov. 21, 1990]

1527.409 Solicitation provisions and contract clauses.

The Contracting Officer shall insert the clause in 1552.227–76 in all Superfund solicitations and contracts in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisition procedures. The clause may be used in other contracts if considered necessary by the Contracting Officer.

[59 FR 18620, Apr. 19, 1994, as amended at 61 FR 57339, Nov. 6, 1996]

PART 1529—TAXES

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.
1529.401–70 Cost-reimbursable type contracts.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 54 FR 49998, Dec. 4, 1989, unless otherwise noted.

Subpart 1529.3—State and Local Taxes

1529.303 Application of State and local taxes to Government contractors and subcontractors.

Contractors are responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available, unless the Contracting Officer determines under FAR 31.205–41(b)(3) that the administrative burden outweighs the corresponding benefit. Contractors are responsible for ensuring that subcontractors also seek and obtain such exemptions, if available.

Subpart 1529.4—Contract Clauses

1529.401 Domestic contracts.

1529.401–70 Cost-reimbursable type contracts.

Contracting Officers shall insert the clause at 1552.229–70 in all solicitations and contracts when it is anticipated a cost-reimbursable type contract shall be used or a contractor or subcontractor shall be reimbursed for materials at cost.

PART 1530—COST ACCOUNTING STANDARDS

Subpart 1530.3—CAS Contract Requirements [Reserved]

PART 1531—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1531.1—Applicability [Reserved]

PART 1532—CONTRACT FINANCING

Subpart 1532.1—General

Sec.
1532.102 Description of contract financing methods.
1532.111 Contract clauses.
1532.170 Forms.

Subpart 1532.2—Commercial Item Purchase Financing

1532.201 Statutory authority.

Subpart 1532.4—Advance Payments [Reserved]

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.
1532.805–70 Forms.

Subpart 1532.9—Prompt Payment

1532.908 Contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8858, Mar. 8, 1984, unless otherwise noted.

Subpart 1532.1—General

1532.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under EPA contracts or subcontracts for construction and alteration or repair of buildings, structures, or other real property.

[60 FR 38505, July 27, 1995]

1532.111 Contract clauses.

The Contracting Officer shall insert the clause at 1552.232–73, Payments—Fixed Rate Services Contract, in solicitations and indefinite delivery/indefinite quantity contracts when services are being acquired on a fixed-rate basis.

1532.170 Forms.

(a) EPA Form 1900–10 Contractor's Cumulative Claim and Reconciliation, at 1553.232–74, shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from inception of the contract to completion. It shall be submitted by the Contractor upon submission of the completion voucher.

(b) EPA Form 1900–68, Notice of Contract Costs Suspended and/or Disallowed, at 1553.232–75, shall be inserted in all cost-reimbursement type and fixed-rate type contracts.

[49 FR 8858, Mar. 8, 1984, as amended at 61 FR 29317, June 10, 1996]

Subpart 1532.2—Commercial Item Purchase Financing

1532.201 Statutory authority.

Authority for making the determination under FAR 32.201 is delegated to a level above the Contracting Officer.

[61 FR 57339, Nov. 6, 1996]

Subpart 1532.4—Advance Payments [Reserved]

Subpart 1532.8—Assignment of Claims

1532.805 Procedure.

1532.805–70 Forms.

(a) EPA Form 1900–3, Assignee's Release, at 1553.232–70 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

(b) EPA Form 1900–4, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts, at 1553.232–71 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

(c) EPA Form 1900–5, Contractor's Assignment of Refunds, Rebates and Credits, at 1553.232–72 must be prepared

by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's Release.

(d) EPA Form 1900–6, Contractor's Release, at 1553.232–73 must be submitted by the Contractor prior to final payment under cost-reimbursement contracts.

Subpart 1532.9—Prompt Payment

1532.908 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as that at 1552.232–70 in all solicitations and contracts for cost reimbursable acquisitions. If a fixed-rate type contract is contemplated, the Contracting Officer shall use the clause with its Alternate I.

[61 FR 29317, June 10, 1996]

PART 1533—PROTESTS, DISPUTES AND APPEALS

Subpart 1533.1—Protests

Sec.
1533.103 Protests to the Agency.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.
1533.212 Contracting Officer's duties upon appeal.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 50 FR 14359, Apr. 11, 1985, unless otherwise noted.

Subpart 1533.1—Protests

1533.103 Protests to the Agency.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.

Pursuant to an interagency agreement between the EPA and the Department of the Interior Board of Contract Appeals (IBCA), the IBCA will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contract Disputes Act. The rules and regulations of the IBCA appear in 43 CFR part 4.

1533.212 Contracting Officer's duties upon appeal.

Upon receipt of notice of appeal, the Contracting Officer shall take the following actions:

(a) *Submission of the notice of appeal to IBCA.* (1) When a notice of appeal in any form has been received, the Contracting Officer shall endorse on it the date of the notice's mailing (or the date of receipt if the notice was otherwise conveyed) and within 5 days shall forward the notice of appeal to the IBCA by certified mail. The Contracting Officer shall verbally notify the legal counsel that the appeal has been received.

(2) A notice of appeal, whether filed within the time prescribed by the ''Disputes'' clause or not, shall be submitted to the IBCA. The Contracting Officer shall forward promptly every notice of appeal to IBCA even if the intention to appeal is only vaguely or indirectly expressed, and regardless of the form of the notice, or of the method by which the notice was furnished to the Contracting Officer.

(3) Copies of the notice of appeal shall be sent simultaneously to the Quality Assurance Branch, Office of Acquisition Management and to legal counsel.

(b) *Establishment and submission of appeal files to IBCA.* (1) Following receipt of a notice of appeal, or advice that an appeal has been filed, the Contracting Officer shall promptly compile the appeal file (copies of all documents pertinent to the appeal), and four duplicate appeal files. The file shall include the following:

(i) The findings of fact and the Contracting Officer's final decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(ii) The contract, and pertinent plans, specifications, amendments, and change orders;

(iii) Correspondence between the parties and other data pertinent to the appeal;

(iv) Transcripts of any testimony taken during the course of proceedings and affidavits, or statements of any witnesses on the matter in dispute

made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

(2) In addition to the above, the Contracting Officer shall prepare an index listing each document included in the file submitted to the IBCA, and place copies of such index in the submission and duplicate files.

(3) Contracting Officers, in making the submission, may not submit original ducuments which are a part of the official contract file. Copies of the pertinent documents shall be submitted.

(4) Within 15 days of receipt or advice of a notice of appeal, the official and two duplicate files shall be forwarded through legal counsel to the Office of Acquisition Management for review. The Procurement and Contracts Management Division shall forward the official appeal file to the IBCA within the 30 day time limitation set forth in 43 CFR 4.104(a). One duplicate file shall be retained by the Contracting Officer, one by the Procurement and Contracts Management Division, and one by legal counsel.

(5) If for any reason the Contracting Officer anticipates that a timely submission cannot be made, he/she shall immediately advise legal counsel by telephone of the extent of the anticipated delay and the reasons therefor. However, every effort will be exerted to make timely submissions.

(6) At the time of transmittal of the appeal file to the Board, the Contracting Officer shall notify the appellant of the transmittal and provide a copy of the appeal file to the appellant. Within the transmittal to the IBCA, the Contracting Officer shall indicate that the appellant has been provided with a copy of the appeal file.

[50 FR 14359, Apr. 11, 1985, as amended at 59 FR 18977, Apr. 21, 1994]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1535—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1535.007 Solicitations.
1535.007–70 Contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

1535.007 Solicitations.

(a) Contracting officers shall insert 48 CFR 1552.235–73, Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information, in all solicitations when the contracting officer has determined that EPA may furnish the contractor with confidential business information which EPA had obtained from third parties under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*).

(b) Contracting officers shall insert 48 CFR 1552.235–75, Access to Toxic Substances Control Act Confidential Business Information, in all solicitations when the contracting officer has determined that EPA may furnish the contractor with confidential business information which EPA had obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

[62 FR 38477, July 18, 1997]

1535.007–70 Contract clauses.

The following clauses are prescribed for research and development (R&D) contracts. They may also be used in other than R&D contracts when applicable (see 1537.110).

(a) The Contracting Officer shall insert the contract clause at 1552.235–70, Screening Business Information for Claims of Confidentiality, in contracts when the Contracting Officer has determined that during performance of this contract, the Contractor may be required to collect information to perform the work required under this contract. Some of the information may consist of trade secrets or commercial or financial information that would be considered as proprietary or confidential by the business that has the right to the information.

(b) The Contracting Officer shall insert the clause at 48 CFR 1552.235–71, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish confidential business information to the contractor obtained from third parties under the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 301 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.), and the provision at 48 CFR 1552.235–70, Release of Contractor Confidential Business Information. EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B require that the contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the contractor.

(c) The Contracting Officer shall insert the clause at 48 CFR 1552.235–76, Treatment of Confidential Business Information (TSCA), in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish the contractor with confidential business information obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B require that the contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the contractor.

(d) The Contracting Officer shall insert the clause at 48 CFR 1552.235–77, Data Security for Federal Insecticide,

Fungicide, and Rodenticide Act, Confidential Business Information, when the contract involves access to confidential business information related to the Federal Insecticide, Fungicide, and Rodenticide Act, and the Treatment of Confidential Business Information clause (48 CFR 1552.235–71) and the Screening Business Information for Claims of Confidentiality clause (48 CFR 1552.235–70) are included.

(e) The Contracting Officer shall insert the clause at 48 CFR 1552.235–78, Data Security for Toxic Substances Control Act Confidential Business Information, when the contract involves access to confidential business information related to the Toxic Substances Control Act, and the Treatment of Confidential Business Information clause (48 CFR 1552.235–76) and Screening Business Information for Claims of Confidentiality clause (48 CFR 1552.235–70) are included.

(f) Contracting Officers shall insert the clause 48 CFR 1552.235–79, Release of Contractor Confidential Business Information, in all solicitations and contracts in order to authorize the Agency to release confidential business information under certain circumstances.

[49 FR 8862, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 61 FR 14265, Apr. 1, 1996; 61 FR 57339, Nov. 6, 1996]

PART 1536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1536.2—Special Aspects of Contracting for Construction

Sec.
1536.201 Evaluation of contractor performance.
1536.209 Construction contracts with architect-engineer firms.

Subpart 1536.5—Contract Clauses

1536.521 Specifications and drawings for construction.

Subpart 1536.6—Architect-Engineer Services

1536.602 Selection of firms for architect-engineer contracts.
1536.602–2 Establishment of evaluation boards.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8863, Mar. 8, 1984, unless otherwise noted.

Subpart 1536.2—Special Aspects of Contracting for Construction

1536.201 Evaluation of contracting performance.

(a) The Contracting Officer will obtain input from the Project Officer on the contractor's performance. The Contracting Officer will prepare the contractor performance report as prescribed in FAR 36.201 within two weeks after final acceptance of the work or contract termination.

(b) Prior to submitting any report or unsatisfactory performance to the reviewing official, the Contracting Officer will advise the contractor of any proposed unsatisfactory rating (see FAR 36.201(a)(3)).

(c) The official at one level above the Contracting Officer will review each performance report.

(d) The Contracting Officer will forward the original of the performance report to the Quality Assurance Branch, Office of Acquisition Management. The Quality Assurance Section will file the form in the contractor performance evaluation files which it maintains.

(e) The Quality Assurance Branch will review the report when it is received and compare it with recent evaluations of that contractor. If the Quality Assurance Section discerns a pattern of unsatisfactory performance, it will notify the Contracting Officer for possible action, which may include referral of the matter to the Compliance Staff or to the Inspector General for investigation.

(f) Information from the performance report shall not be released outside of the Agency, except to other Government agencies at their written request, and on condition that the information will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with EPA's Freedom of Information Act procedures at 40 CFR part 2.

[49 FR 8863, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994]

1536.209 Construction contracts with architect-engineer firms.

(a) The provisions of FAR 36.209 do not apply to subcontractors performing treatability studies.

(b) The provisions of FAR 36.209 also do not apply to subcontractors whose input during the design phase does not substantially affect the course of the design work.

(c) Approval under FAR 36.209 is not required for subcontractors under paragraph (a) or (b) of this section. Approval for all other subcontractors and prime contractors may be granted by the CCO. In reviewing requests for approval, the RAD shall consider factors such as the availability of other firms to perform the necessary construction or Superfund remedial action work, the estimated cost to the Government, and the policy of the Agency to promote the use of innovative technology.

[55 FR 49283, Nov. 27, 1990, as amended at 59 FR 18977, Apr. 21, 1994]

Subpart 1536.5—Contract Clauses

1536.521 Specifications and drawings for construction.

The Contracting Officer shall insert the clause at 1552.236–70, Samples and Certificates, in soliciations and contracts when a fixed price construction contract is expected to exceed the small purchase limitation. The clause may be inserted in solicitations and contracts when the contract is expected to be within the small purchase limitation.

Subpart 1536.6—Architect-Engineer Services

1536.602 Selection of firms for architect-engineer contracts.

1536.602–2 Establishment of evaluation boards.

(a) The Environmental Protection Agency Architect-Engineer Evaluation Board is established as a central permanent Board located at Headquarters EPA under authority delegated to the Director, Office of Acquisition Management. The Board shall perform all architect-engineer evaluations on an agency-wide basis. The Agency Board shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Architect-Engineer Evaluation Board:

(1) *Member and Chairperson.* Chief, Engineering, Planning, and Architecture Branch, Facilities Management and Services Division or his/her designee;

(2) *Member.* A professional engineer or architect from EPA to be designated by the Chairperson;

(3) *Member.* A program official initiating the requirement or a designated representative; and

(4) *Advisory Member.* A Contracting Officer or his/her representative.

(b) The Chief of the Contracting Office (CCO) is delegated the authority to appoint either one or two additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairperson, an alternate experienced in architecture, engineering, or construction to serve in his/her absence.

(d) The duties of the advisory member shall include, but not be limited to, the following:

(1) Assuring that the criteria set forth in the public notice are applied in the evaluation process; and

(2) Assuring that actions taken during the evaluation process do not compromise subsequent procurement actions.

[59 FR 18977, Apr. 21, 1994]

PART 1537—SERVICE CONTRACTING

Subpart 1537.1—Service Contracts—General

Sec.
1537.110 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8864, Mar. 8, 1984, unless otherwise noted.

Subpart 1537.1—Service Contracts—General

1537.110 Solicitation provisions and contract clauses.

The following clauses are prescribed for service contracts. They may also be used in research and development contracts when applicable (see 1535.007–70).

(a) The Contracting Officer shall insert the clause at 1552.237–70, Contract Publication Review Procedures, in solicitations and contracts when the products of the contract are subject to contract publication review.

(b) The Contracting Officer shall insert the clause at 1552.237–71, Technical Direction, in cost-reimbursement type solicitations and contracts.

(c) The Contracting Officer shall insert the clause at 1552.237–72, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor key personnel.

(d) The Contracting Officer shall insert the clause at 1552.237–73, Consultant Services and Consent, in solicitations and contracts where the services of consultants are required.

(e) The Contracting Officer shall insert the clause at 1552.237–74, Publicity, in solicitations and contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(f) The Contracting Officer shall insert the clause at 1552.237–75, Paperwork Reduction Act, in solicitations and contracts requiring the collection of identical information from (10) or more public respondents.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1542—CONTRACT ADMINISTRATION

Subpart 1542.7—Indirect Cost Rates

Sec.
1542.703–2 Certificate of indirect costs.
1542.705 Final indirect cost rates.
1542.705–70 Solicitation and contract clause.
1542.708 Quick-closeout procedures.

Subpart 1542.12—Novation and Change of Name Agreements

1542.1200 Scope of subpart.
1542.1202 Responsibility for executing agreements.
1542.1203 Processing agreements.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8865, Mar. 8, 1984, unless otherwise noted.

Subpart 1542.7—Indirect Cost Rates

1542.703–2 Certificate of indirect costs.

The Head of the Contracting Activity may waive the certification requirement set forth in FAR 42.703–2.

[61 FR 57339, Nov. 6, 1996]

1542.705 Final indirect cost rates.

The EPA shall use the Contracting Officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates.

1542.705–70 Solicitation and contract clause.

The Contracting Officer shall insert the clause in 1552.242–70, Indirect Costs, in solicitations and contracts where indirect costs apply, unless contracting with an educational institution where there are approved predetermined final indirect cost rates.

[62 FR 33573, June 20, 1997]

1542.708 Quick-closeout procedures.

(a) The Contracting Officer or contract administrator, as appropriate, may use quick-closeout procedures for settlement of indirect costs on cost-reimbursement contracts prior to a final audit certification when the conditions specified by FAR 42.708(a) (1) through (3) have been met and: (1) The contract has an estimated cost, excluding fee of $2,000,000, or less, and (2) the cumulative estimated costs of one Contrator's contracts closed out using these quick-closeout procedures do not exceed $5,000,000 per contract office.

(b) Under the quick-closeout procedures, if final rates have been negotiated for all but one of the fiscal years and 25 percent or less of the total costs claimed are for that fiscal year, the Contracting Officer or contract administrator shall close the contract using one of the following rates:

(1) The previous year final rates.

(2) The subsequent year final rates.

(3) Provisional rates, if less than the rates in paragraph (b) (1) or (2) of this section.

(4) Any other rates claimed by the Contractor if they are less than those in paragraph (b) (1), (2), or (3) of this section.

(c) When the final rates have not been negotiated and the procedures in paragraph (b) of this section do not apply, the Contracting Officer or contract administrator shall request the Cost Policy and Rate Negotiation Branch (CPRN), Office of Acquisition Management to negotiate or to obtain final rates.

[49 FR 8865, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994; 60 FR 21994, May 4, 1995]

Subpart 1542.12—Novation and Change of Name Agreements

1542.1200 Scope of subpart.

This subpart implements FAR subpart 42.12 and provides policies and procedures for executing and processing novation and change-of-name agreements.

1542.1202 Responsibility for executing agreements.

(a) Any EPA contracting office upon being notified of a successor in interest to, or change of name of, one of its Contractors shall promptly report such

information by memorandum to the Director, Policy, Training and Oversight Division (POTD).

(b) To avoid duplication of effort on the part of EPA contracting offices in preparing and executing agreements to recognize a change of name or successor in interest, only one supplemental agreement will be prepared to effect necessary changes for all contracts between EPA and the Contractor involved. The Chief of the Procurement Policy Branch, Policy, Training and Oversight Division (PTOD), will, in each case, designate the Contracting Office responsible for taking all necessary and appropriate action with respect to either recognizing or not recognizing a successor in interest, or recognizing a change of name agreement.

[49 FR 8865, Mar. 8, 1984, as amended at 55 FR 24580, June 18, 1990; 59 FR 18977, Apr. 21, 1994]

1542.1203 Processing agreements.

(a) The responsible contracting office shall:

(1) Obtain from the Contractor a list of all affected contracts, the names and addresses of the contracting offices responsible for these contracts, and the required documentary evidence.

(2) Verify the accuracy of the list of contracts through the Contract Information System.

(3) Draft and execute a supplemental agreement to one of the contracts affected but covering all applicable outstanding and incomplete contracts affected by the transfer of assets or change of name. A supplemental agreement number need not be obtained for contracts other than for the one under which the supplemental agreement is written. The supplemental agreement will contain a list of the contracts affected and, for distribution purposes, the names and addresses of the contracting offices having contracts subject to the supplemental agreement.

(b) Agreements and supporting documents covering successors in interest shall be reviewed for legal sufficiency by legal counsel.

(c) After execution of the supplemental agreement, the designated office shall forward an authenticated copy of the supplemental agreement to the Director, Policy, Training and Oversight Division, and to each affected contract office.

[49 FR 8865, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994]

PART 1545—GOVERNMENT PROPERTY

Subpart 1545.1—General

Sec.
1545.106 Government property clauses.

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8866, Mar. 8, 1984, unless otherwise noted.

Subpart 1545.1—General

1545.106 Government property clauses.

(a) In accordance with 1523.303–71, the Contracting Officer shall insert the contract clause at 1552.245–70 when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the cleanup of hazardous or toxic substances in the environment.

(b) The Contracting Officer shall insert the contract clause at 1552.245–71, Government-Furnished Data, in any contract in which the Government is to furnish data to the Contractor. The data to be provided shall be identified in the clause.

(c) The Contracting Officer shall insert the contract clause at 1552.245–72, Fabrication or Acquisition of Nonexpendable Property, in all cost-reimbursement type contracts or contracts with cost-reimbursement portions.

[49 FR 8866, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

Subpart 1545.3—Providing Government Property to Contractors

1545.309 Providing Government production and research property under special restrictions.

Government production and research property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or plant equipment, shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable unless the contract under which the property is provided contains—

(a) One of the provisions in FAR 45.309(a);

(b) A requirement that the Government will have the right to abandon in place all nonseverable Government property provided; and

(c) A requirement that the Government will not have any obligation to disassemble or remove the property or to restore or to rehabilitate the premises on which the property is located.

PART 1546—QUALITY ASSURANCE

Subpart 1546.2—Contract Quality Requirements

Sec.
1546.201 General.

Subpart 1546.7—Warranties

1546.704 Authority for use of warranties.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

Subpart 1546.2—Contract Quality Requirements

1546.201 General.

(a) The Contracting Officer shall ensure that Procurement Request/Orders (EPA Form 1900–8) in excess of $25,000 be accompanied by a Quality Assurance (QA) review form for those acquisitions in the object classifications prescribed in chapter 2 of the ''Contracts Management Manual'' which covers procurement request preparation.

(b) Where the QA review form provides for the submission of a QA program plan in an offeror's proposal, the Contracting Officer shall use the provision shown in 1552.246–70 in the solicitation.

(c)(1) The Contracting Officer shall include the provision contained in 1552.246–71 in the solicitation when a QA project plan is required as part of the proposal submission. The QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specification in a Statement of Work.

(2) When a QA project plan is not a required part of the technical proposal, the Contracting Officer may require the QA project plan as a deliverable under the contract by use of the clause in 1552.246–72.

Subpart 1546.7—Warranties

1546.704 Authority for use of warranties.

The Contracting Officer shall ensure that the use of a warranty clause in a contract has the concurrence of the Project Officer.

PART 1548—VALUE ENGINEERING

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1552.2—Texts of Provisions and Clauses

Sec.
1552.203–70 Current/former agency employee involvement certification.
1552.208–70 Printing.
1552.209–70 Organizational conflict of interest notification.
1552.209–71 Organizational conflicts of interest.
1552.209–72 Organizational conflict of interest certification.
1552.209–73 Notification of conflicts of interest regarding personnel.
1552.209–74 Limitation of future contracting.
1552.209–75 Annual certification.
1552.210–71 [Reserved]
1552.210–73—1552.210–74 [Reserved]
1552.211–70 Reports of work.
1552.211–72 Monthly progress report.
1552.211–73 Level of effort—cost-reimbursement term contract.
1552.211–74 Work assignments.
1552.211–75 Working files.
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1552.211–77 Final reports.
1552.211–78 Management consulting services.
1552.211–79 Compliance with EPA Policies for Information Resources Management.
1552.213–70 Notice to suppliers of equipment.
1552.214–71 Contract award—other factors—formal advertising.
1552.215–70 EPA source selection and selection procedures—negotiated procurements. (Sep 1996)
1552.215–71 Evaluation factors for award.
1552.215–73 Instructions for the preparation of technical and cost or pricing proposals.
1552.215–74 Cost proposal instructions.
1552.215–75 [Reserved]
1552.215–76 General financial and organizational information.
1552.216–70 Award fee.
1552.216–71 Date of incurrence of cost.
1552.216–72 Ordering—by designated ordering officers.
1552.216–73 Fixed rates for services—indefinite delivery/indefinite quantity contract.
1552.216–74 Payment of fee.
1552.216–75 Base fee and award fee proposal.
1552.216–76 Estimated cost and cost–sharing.
1552.217–70 Evaluation of contract options.
1552.217–71 Option to extend the term of the contract—cost-type contract.
1552.217–72 Option to extend the term of the contract—cost-plus-award-fee contract.
1552.217–73 Option for increased quantity—cost-type contract.
1552.217–74 Option for increased quantity—cost-plus-award-fee contract.
1552.217–75 Option to extend the effective period of the contract—time and materials or labor hour contract.
1552.217–76 Option to extend the effective period of the contract—indefinite delivery-indefinite quantity contract.
1552.223–70 Protection of human subjects.
1552.224–70 Social security numbers of consultants and certain sole proprietors and Privacy Act statement.
1552.227–76 Project employee confidentiality agreement.
1552.229–70 State and local taxes.
1552.232–70 Submission of invoices.
1552.232–71—1552.232–72 [Reserved]
1552.232–73 Payments—fixed rate services contract.
1552.235–70 Screening business information for claims of confidentiality.
1552.235–71 Treatment of confidential business information.
1552.235–72 [Reserved].
1552.235–73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential business information (Apr 1996).
1552.235–74 [Reserved].
1552.235–75 Access to Toxic Substances Control Act confidential business information (Apr 1996).
1552.235–76 Treatment of confidential business information (Apr 1996).
1552.235–77 Data Security for Federal Insecticide, Fungicide and Rodenticide Act Confidential Business Information (June 1997)
1552.235–78 Data Security for Toxic Substances Control Act Confidential Business Information (June 1997)
1552.235–79 Release of contractor confidential business information (Apr 1996).
1552.236–70 Samples and certificates.
1552.237–70 Contract publication review procedure.
1552.237–71 Technical direction.
1552.237–72 Key personnel.
1552.237–73 Consultant services and consent.
1552.237–74 Publicity.
1552.237–75 Paperwork Reduction Act.
1552.239–103 Acquisition of Energy Star compliant microcomputers, including personal computers, monitors and printers.
1552.242–70 Indirect costs.
1552.245–70 Decontamination of government property.
1552.245–71 Government-furnished data.

1552.245–72 Fabrication or acquisition of nonexpendable property.
1552.246–70 Quality Assurance (QA) Program Plan.
1552.246–71 Quality Assurance (QA) Project Plan.
1552.246–72 Quality Assurance (QA) Project Plan documentation.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8867, Mar. 8, 1984, unless otherwise noted.

Subpart 1552.2—Texts of Provisions and Clauses

1552.203–70 Current/former agency employee involvement certification.

As prescribed in 1503.603, insert the following solicitation provision in all EPA solicitation documents for sole source acquisitions.

CURRENT/FORMER AGENCY EMPLOYEE INVOLVEMENT CERTIFICATION (APR 1984)

The offeror (quoter) hereby certifies that:

(a) He is [ ] is not [ ] a former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(b) He does [ ] does not [ ] employ or propose to employ a current/former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote) and who has been or will be involved, directly or indirectly, in developing or negotiating this offer (quote) for the offeror (quoter), or in the management, administration or performance of any contract resulting from this offer (quote).

(c) He does [ ] does not [ ] employ or propose to employ as a consultant or subcontractor under any contract resulting from this offer (quote) a current/former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote).

(d) A former regular or special EPA employee whose EPA employment terminated within one year prior to submission of this offer (quote) or such former employee's spouse or minor child does [ ] does not [ ] own or substantially own or control the offeror's (quoter's) firm.

(e) See EPAAR part 1503 for definitions of the terms ''regular'' and ''special employee.''

(End of provision)

[49 FR 8867, Mar. 8, 1984, as amended at 50 FR 14360, Apr. 11, 1985]

1552.208–70 Printing.

As prescribed in 1508.870, insert the following contract clause in all type contracts which require printing, duplication, binding, reproduction, and related services and are subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States.

PRINTING (APR 1984)

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages, such pages not exceeding a maximum image size of 10¾ by 14¼ inches, will not be deemed to be printing.

(End of clause)

1552.209–70 Organizational conflict of interest notification.

As prescribed in 1509.507–1(b) insert the following solicitation provision in all solicitations.

ORGANIZATIONAL CONFLICT OF INTEREST NOTIFICATION (APR 1984)

(a) The prospective Contractor certifies, to the best of its knowledge and belief, that it is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the prospective Contractor cannot so certify, it shall provide a disclosure statement in its proposal which describes all relevant information concerning any past, present, or planned interests bearing on whether it (including its chief executives and directors, or any proposed consultant or subcontractor) may have a potential organizational conflict of interest.

(b) Prospective Contractors should refer to FAR subpart 9.5 and EPAAR part 1509 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest.

(c) If the Contracting Officer determines that a potential conflict exists, the prospective Contractor shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994; 62 FR 33573, June 20, 1997]

1552.209–71 Organizational conflicts of interest.

As prescribed in 1509.507–2, insert the following contract clause in all contracts except:

(a) When specific clauses are required per EPAAR part 1509;

(b) When the procurement is with another Federal agency (however, the provision is included in contracts with SBA and its subcontractor under the 8(a) program); and

(c) When the procurement is accomplished through simplified acquisition procedures, use of the clause is optional.

ORGANIZATIONAL CONFLICTS OF INTEREST (MAY 1994)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) Prior to commencement of any work, the Contractor agrees to notify the Contracting Officer immediately that, to the best of its knowledge and belief, no actual or potential conflict of interest exists or to identify to the Contracting Officer any actual or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within five (5) working days.

(c) The Contractor agrees that if an actual or potential organizational conflict of interest is identified during performance, the Contractor will immediately make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict of interest. The Contractor shall continue performance until notified by the Contracting Officer of any contrary action to be taken.

(d) Remedies—The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose it or misprepresented relevant information to the Contracting officer, the Government may terminate the contract for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

(End of clause)

Alternate I to Paragraph (e)

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994; 61 FR 57339, Nov. 6, 1996]

1552.209–72 Organizational conflict of interest certification.

As prescribed in 1509.507–1(b), insert the following provision in all solicitation documents when applicable.

ORGANIZATIONAL CONFLICT OF INTEREST CERTIFICATION (APR 1984)

The offeror [ ] is [ ] is not aware of any information bearing on the existence of any potential organizational conflict of interest. If the offeror is aware of information bearing on whether a potential conflict may exist, the offeror shall provide a disclosure statement describing this information. (See section L of the solicitation for further information.)

(End of provision)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18620, Apr. 19, 1994]

1552.209–73 Notification of conflicts of interest regarding personnel.

As prescribed in 1509.507–2(b) insert the following clause:

NOTIFICATION OF CONFLICTS OF INTEREST REGARDING PERSONNEL (MAY 1994)

(a) In addition to the requirements of the contract clause entitled ''Organizational Conflicts of Interest,'' the following provisions with regard to employee personnel performing under this contract shall apply until the earlier of the following two dates: the

termination date of the affected employee(s) or the expiration date of the contract.

(b) The Contractor agrees to notify immediately the EPA Project Officer and the Contracting Officer of (1) any actual or potential personal conflict of interest with regard to any of its employees working on or having access to information regarding this contract, or (2) any such conflicts concerning subcontractor employees or consultants working on or having access to information regarding this contract, when such conflicts have been reported to the Contractor. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work.

(c) The Contractor agrees to notify each Project Officer and Contracting Officer prior to incurring costs for that employee's work when an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the contract begins, the Contractor shall immediately notify the Contracting Officer of the personal conflict of interest. The Contractor shall continue performance of this contract until notified by the Contracting Officer of the appropriate action to be taken.

(d) The Contractor agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

(End of clause)

[59 FR 18620, Apr. 19, 1994]

1552.209–74 Limitation of future contracting.

As prescribed in 1509.507–2(c), insert the following clause or alternate:

LIMITATION OF FUTURE CONTRACTING (ARCS) (MAR 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) The Contractor will be ineligible to enter into a contract for remedial action projects for which the Contractor has developed the statement of work or the solicitation package.

(c) The following applies when ARCS work is performed under this contract and when both ARCS work and Field Investigative Team (FIT) work are performed on the same site under this contract: Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of five (5) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) The following applies to FIT work at sites under this contract where only FIT work is performed, except for those sites where EPA has made a determination of ''no further remedial action planned'' (NFRAP): Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of three (3) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING ALTERNATE I (TCRR) (MAR 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the delivery order or tasking document and for a period of five (5) years after the completion of the delivery order or tasking document, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA within the Contractor's Time Critical Rapid Response (TCRR) assigned geographical area(s), either as a prime contractor, subcontractor, or consultant.

(2) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA as a prime contractor, subcontractor or consultant at a site where it has performed or plans to perform TCRR work.

(3) It will be ineligible for award of TAT type activities contracts for sites within its respective TCRR assigned geographical area(s) which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of

this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING, ALTERNATE II (TAT) (MAR 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the technical direction document and for a period of five (5) years after the completion of the technical direction document, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide to EPA cleanup services (e.g., Time Critical Rapid Response (TCRR) contracts) within the Contractor's Technical Assistance Team (TAT) assigned geographical area(s), either as a prime Contractor, subcontractor, or consultant.

(2) Unless an individual design for the site has been prepared by a third party, it will not provide to EPA as a prime contractor, subcontractor or consultant any remedial construction services at a site where it has performed or plans to perform TAT work. This clause will not preclude TAT contractors from performing construction management services under other EPA contracts.

(3) It will be ineligible for award of TCRR type activities contracts for sites within its respective TAT assigned geographical area(s) which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to,

Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING; ALTERNATE III (ESAT) (MAR 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(d) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(f) If the Contractor seeks an expedited decision regarding its initial future contracting request, the contractor may submit its

request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(g) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING, ALTERNATE IV (TES) (MAR 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) During the performance period of this contract, the Contractor will be ineligible to enter into any contract for remedial planning and/or implementation projects for sites within the assigned geographical area(s) covered by this contract without the prior written approval of the EPA Contracting Officer.

(c) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(d) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the work assignment and for a period of seven (7) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) Any work relating to CERCLA activities which pertain to a site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to a site where the Contractor previously performed work for the EPA under this contract.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(i) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(j) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

LIMITATION OF FUTURE CONTRACTING, ALTERNATE V (HEADQUARTERS SUPPORT) (MAY 1994)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor, during the life of this contract, will be ineligible to enter into a contract with EPA to perform response action work (e.g., Alternative Remedial Contracting Strategy (ARCS), Time Critical Rapid Response (TCRR), Technical Assistance Team (TAT), and Technical Enforcement Support (TES) contracts), unless otherwise authorized by the Contracting Officer.

(d) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(e) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(f) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (f) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(g) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(h) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

≤(End of clause)

LIMITATION OF FUTURE CONTRACTING; ALTERNATE VI (SITE SPECIFIC) (MAR 1997)

(a) The parties to this contract agree that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime contractor or subcontractor under an ensuing EPA contract.

(c) Unless prior written approval is obtained from the cognizant EPA Contracting Officer, the Contractor, during the life of the

contract and for a period of five (5) years after the expiration of the contract agrees not to enter into a contract with or to represent any party, other than EPA, with respect to: (1) any work relating to CERCLA activities which pertain to the site where the Contractor previously performed work for EPA under this contract; or (2) any work that may jeopardize CERCLA enforcement actions which pertain to the site where the Contractor previously performed work for the EPA under this contract.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team (TAT) type activities (e.g., TAT contracts) to EPA on the site either as a prime contractor, subcontractor, or consultant.

(2) It will be ineligible for award of contracts pertaining to this site which result from a CERCLA administrative order, a CERCLA or RCRA consent decree or a court order.

(e) The Contractor and any subcontractors, during the life of this contract, shall be ineligible to enter into an EPA contract or a subcontract under an EPA contract, which supports EPA's performance of Superfund Headquarters policy work including support for the analysis and development of regulations, policies, or guidance that govern, affect, or relate to the conduct of response action activities, unless otherwise authorized by the Contracting Officer. Examples of such contracts include, but are not limited to, Superfund Management and Analytical support contracts, and Superfund Technical and Analytical support contracts.

(f) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk. Therefore, no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(g) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure.

(h) Contractors who are performing nondiscretionary technical or engineering services, including construction work, may request a waiver from or modification to this clause by submitting a written request to the Contracting Officer. The Contracting Officer shall make the determination regarding whether to waive or modify the clause on a case-by-case basis.

(i) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services, including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (h) unless otherwise authorized by the Contracting Officer. The Contractor may request in writing that the Contracting Officer exempt from this clause a particular subcontract or consultant agreement for nondiscretionary technical or engineering services not specifically listed above, including laboratory analysis. The Contracting Officer will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

(j) If the Contractor seeks an expedited decision regarding its initial future contracting request, the Contractor may submit its request to both the Contracting Officer and the next administrative level within the Contracting Officer's organization.

(k) A review process available to the Contractor when an adverse determination is received shall consist of a request for reconsideration to the Contracting Officer or a request for review submitted to the next administrative level within the Contracting Officer's organization. An adverse determination resulting from a request for reconsideration by the Contracting Officer will not preclude the Contractor from requesting a review by the next administrative level. Either a request for review or a request for reconsideration must be submitted to the appropriate level within 30 calendar days after receipt of the initial adverse determination.

(End of clause)

[59 FR 18620, Apr. 19, 1994, as amended at 62 FR 5348, Feb. 5, 1997]

1552.209–75 Annual certification.

As prescribed in 1509.507–2(d), insert the following clause:

ANNUAL CERTIFICATION (MAY 1994)

The Contractor shall submit an annual conflict of interest certification to the Contracting Officer. In this certification, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual or potential organizational conflicts of interest have been reported to EPA. In addition, in this annual certification, the Contractor shall certify that it has informed its personnel who perform work

under EPA contracts or relating to EPA contracts of their obligation to report personal and organizational conflicts of interest to the Contractor. Such certification must be signed by a senior executive of the company and submitted in accordance with instructions provided by the Contracting Officer. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter, until expiration or termination of the contract. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

(End of clause)

[59 FR 18623, Apr. 19, 1994. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.210–71 [Reserved]

1552.210–73—1552.210–74 [Reserved]

1552.211–70 Reports of work.

As prescribed in 1511.011–70, insert one of the contract clauses in this subsection when the contract requires the delivery of reports. The basic clause should be used when reports are specified in a contract attachment. Alternate I is to be used to specify reports in the contract schedule.

REPORTS OF WORK (APR 1984)

The Contractor shall prepare and deliver reports in accordance with Attachment.* * *

The OMB clearance number for progress reports delivered under this contract is 2030–0005 with an expiration date of May 31, 1986.

(End of clause)

REPORTS OF WORK (APR 1984) ALTERNATE I (APR 1984)

The Contractor shall prepare and deliver the below listed reports to the designated addressees. Each report shall cite the contract number and identify the Environmental Protection Agency as the sponsoring agency.

The OMB clearance number for progress reports delivered under this contract is 2030–0005 with an expiration date of May 31, 1986. Required reports are:

Reports description	No. copies	Addressees
.....	.....	.....
.....	.....	.....
.....	.....	.....

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–72 Monthly progress report.

As prescribed in 1511.011–72, insert the following clause:

MONTHLY PROGRESS REPORT (JUN 1996)

(a) The Contractor shall furnish _____ copies of the combined monthly technical and financial progress report stating the progress made, including the percentage of the project completed, and a description of the work accomplished to support the cost. If the work is ordered using work assignments or delivery orders, include the estimated percentage of task completed during the reporting period for each work assignment or delivery order.

(b) Specific discussions shall include difficulties encountered and remedial action taken during the reporting period, and anticipated activity with a schedule of deliverables for the subsequent reporting period.

(c) The Contractor shall provide a list of outstanding actions awaiting Contracting Officer authorization, noted with the corresponding work assignment, such as subcontractor/consultant consents, overtime approvals, and work plan approvals.

(d) The report shall specify financial status at the contract level as follows:

(1) For the current reporting period, display the amount claimed.

(2) For the cumulative period and the cumulative contract life display: the amount obligated, amount originally invoiced, amount paid, amount suspended, amount disallowed, and remaining approved amount. The remaining approved amount is defined as the total obligated amount, less the total amount originally invoiced, plus total amount disallowed.

(3) Labor hours.

(i) A list of employees, their labor categories, and the numbers of hours worked for the reporting period.

(ii) For the current reporting period, display the expended direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iii) For the cumulative contract period and the cumulative contract life display: the negotiated, expended and remaining direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor, and each subcontractor and consultant.

(iv) Display the estimated direct labor hours and costs to be expended during the next reporting period.

(4) Display the current dollar ceilings in the contract, net amount invoiced, and remaining amounts for the following categories: Direct labor hours, total estimated cost, award fee pool (if applicable), subcontracts by individual subcontractor, travel, program management, and Other Direct Costs (ODCs).

(5) Unbilled allowable costs. Display the total costs incurred but unbilled for the current reporting period and cumulative for the contract.

(6) Average cost of direct labor. Compare the actual average cost per hour to date with the average cost per hour of the approved work plans for the current contract period.

(e) The report shall specify financial status at the work assignment or delivery order level as follows:

(1) For the current period, display the amount claimed.

(2) For the cumulative period display: amount shown on workplan, or latest work assignment/delivery order amendment amount (whichever is later); amount currently claimed; amount paid; amount suspended; amount disallowed; and remaining approved amount. The remaining approved amount is defined as: the workplan amount or latest work assignment or delivery order amount (whichever is later), less total amounts originally invoiced, plus total amount disallowed.

(3) Labor hours.

(i) A list of employees, their labor categories, and the number of hours worked for the reporting period.

(ii) For the current reporting period, display the expended direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iii) For the current reporting period, cumulative contract period, and the cumulative contract life display: the negotiated, expended and remaining direct labor hours and costs broken out by EPA contract labor hour category for the prime contractor and each subcontractor and consultant.

(iv) Display the estimated direct labor hours and costs to be expended during the next reporting period.

(v) Display the estimates of remaining direct labor hours and costs required to complete the work assignment or delivery order.

(4) Unbilled allowable costs. Display the total costs incurred but unbilled for the current reporting period and cumulative for the work assignment.

(5) Average cost of direct labor. Display the actual average cost per hour with the cost per hour estimated in the workplan.

(6) A list of deliverables for each work assignment or delivery order during the reporting period.

(f) This submission does not change the notification requirements of the ''Limitation of Cost'' or ''Limitation of Funds'' clauses requiring separate written notice to the Contracting Officer.

(g) The reports shall be submitted to the following addresses on or before the _____ of each month following the first complete reporting period of the contract. See EPAAR 1552.232–70, Submission of Invoices, paragraph (e), for details on the timing of submittals. Distribute reports as follows:

No. of copies	Addressee
_____	Project Officer.
_____	Contracting Officer.

[61 FR 29317, June 10, 1996. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–73 Level of effort—cost-reimbursement term contract.

As prescribed in 1511.011–73, insert the following contract clause in cost-reimbursement term contracts including cost contracts without fee, cost-sharing contracts, cost-plus-fixed-fee (CPFF) contracts, cost-plus-incentive-fee contracts (CPIF), and cost-plus-award-fee contracts (CPAF).

LEVEL OF EFFORT—COST-REIMBURSEMENT TERM CONTRACT (APR 1984)

(a) The Contractor shall perform all work and provide all required reports within the level of effort specified below. The Government hereby orders——direct labor hours for the base period, which represents the Government's best estimate of the level of effort to fulfill these requirements.

(b) Direct labor includes personnel such as engineers, scientists, draftsmen, technicians, statisticians, and programmers and not support personnel such as company management, typists, and key punch operators even though such support personnel are normally treated as direct labor by the Contractor. The level of effort specified in paragraph (a) includes Contractor, subcontractor, and consultant labor hours.

(c) If the Contractor provides less than 90 percent of the level of effort specified for the base period or any optional period ordered, an equitable downward adjustment of the fixed fee, if any, for that period will be made. The Government may require the Contractor to provide additional effort up to 110 percent of the level of effort for any period until the estimated cost for that period has been reached. However, this additional effort shall not result in any increase in the fixed fee, if any. If this is a cost-plus-incentive-fee (CPIF) contract, the term ''fee'' in this paragraph means ''base fee and incentive fee.'' If

this is a cost-plus-award-fee (CPAF) contract, the term ''fee'' in this paragraph means ''base fee and award fee.''

(d) If the level of effort specified to be ordered during a given base or option period is not ordered during that period, that level of effort may not be acumulated and ordered during a subsequent period.

(e) These terms and conditions do not supersede the requirements of either the ''Limitation of Cost'' or ''Limitation of Funds'' clauses.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–74 Work assignments.

As prescribed in 1511.011–74, insert the following contract clause in cost-reimbursement type term form contracts when work assignments are to be used.

WORK ASSIGNMENTS (APR 1984)

(a) The contractor shall perform work under this contract as specified in written work assignments issued by the Contracting Officer.

(b) Each work assignment will include (1) a numerical designation, (2) the estimate of required labor hours, (3) the period of performance and schedule of deliverables, and (4) the description of the work.

(c) The Contractor shall acknowledge receipt of each work assignment by returning to the Contracting Officer a signed copy of the work assignment within ___ calendar days after its receipt. The Contractor shall begin work immediately upon receipt of a work assignment. Within ___ calendar days after receipt of a work assignment, the Contractor shall submit ___ copies of a work plan to the Project Officer and ___ copies to the Contracting Officer. The work plan shall include a detailed technical and staffing plan and a detailed cost estimate. Within ___ calendar days after receipt of the work plan, the Contracting Officer will provide written approval or disapproval of it to the Contractor. If the Contractor has not received approval on a work plan within ___ calendar days after its submission, the Contractor shall stop work on that work assignment. Also, if the Contracting Officer disapproves a work plan, the Contractor shall stop work until the problem causing the disapproval is resolved. In either case, the Contractor shall resume work only when the Contracting Officer finally approves the work plan.

(d) This clause does not change the requirements of the ''Level of Effort'' clause, nor the notification requirements of either the ''Limitation of Cost'' or ''Limitation of Funds'' clauses.

(e) Work assignments shall not allow for any change to the terms or conditions of the contract. Where any language in the work assignment may suggest a change to the terms or conditions, the Contractor shall immediately notify the Contracting Officer.

(END OF CLAUSE)

Alternate I. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the COI certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

Alternate II. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) Within 20 days of receipt of the work assignment or similar tasking document, the Contractor shall provide a conflict of interest certification. Where work assignments or similar tasking documents are issued under this contract for work on or directly related to a site, the Contractor is only required to provide a conflict of interest certification for the first work assignment issued for that site. For all subsequent work on that site under this contract, the Contractor has a continuing obligation to search and report

any actual or potential conflicts of interest, but no additional conflict of interest certifications are required.

Before submitting the conflict of interest certification, the contractor shall initially search through all of its available records to identify any actual or potential conflicts of interest. During the first three years of this contract, the contractor shall search through all records created since the beginning of the contract plus the records of the contractor prior to the award of the contract until a minimum of three years of records are accumulated. Once three years of records have accumulated, prior to certifying, the contractor shall search its records accumulated, at a minimum, over the past three years immediately prior to the receipt of the work assignment or similar tasking document. In the certification, the Contractor must certify to the best of the Contractor's knowledge and belief, that all actual or potential organizational conflicts of interest have been reported to the Contracting Officer or that to the best of the Contractor's knowledge and belief, no actual or potential organizational conflicts of interest exist. In addition, the Contractor must certify that its personnel who perform work under this work assignment or relating to this work assignment have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The certification shall also include a statement that the Contractor recognizes its continuing obligation to identify and report any actual or potential conflicts of interest arising during performance of this work assignment or other work related to this site.

(End of clause)

[49 FR 8867, Mar. 8, 1994, as amended at 59 FR 18624, Apr. 19, 1994. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–75 Working files.

As prescribed in 1511.011–75, insert the following clause in all applicable EPA contracts.

WORKING FILES (APR 1984)

The Contractor shall maintain accurate working files (by task or work assignment) on all work documentation including calculations, assumptions, interpretations of regulations, sources of information, and other raw data required in the performance of this contract. The Contractor shall provide the information contained in its working files upon request of the Contracting Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–76 Legal analysis.

As prescribed in 1511.011–76, insert this contract clause when it is determined that the contract involves legal analysis.

LEGAL ANALYSIS (APR 1984)

The Contractor shall furnish to the Project Officer one (1) copy of any draft legal analysis. The Government will provide a response to the Contractor within thirty (30) calendar days after receipt. The Contractor shall not finalize the analysis until the Government has given approval.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–77 Final reports.

As prescribed in 1511.011–77, insert this contract clause when a contract requires a draft and a final report.

FINAL REPORTS (APR 1984)

(a) ''Draft Report''—The Contractor shall submit to the Project Officer ___ copies of the draft final report on or before ___ (date) ___ The Contractor shall furnish to the Contracting Officer a copy of the letter transmitting the draft. The draft shall be typed double-spaced or space-and-a-half and shall include all pertinent material required in the final report. The Government will review for approval or disapproval the draft and provide a response to the Contractor within ___ calendar days after receipt. If the Government does not provide a response within the allotted review time, the Contractor immediately shall notify the Contracting Officer in writing.

(b) ''Final Report''—The Contractor shall deliver a final report on or before the last day of the period of performance specified in the contract. Distribution is as follows:

No. of copies	Addressee
1	EPA Library.
1	Contracting Officer.
1	Project Officer.

(End of clause)

[49 FR 8867, Mar. 8, 1984. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–78 Management consulting services.

As prescribed in 1511.011–78, insert the following contract clause in all contracts for management consulting services.

MANAGEMENT CONSULTING SERVICES (APR 1985)

All reports containing recommendations to the Environmental Protection Agency shall include the following information on the cover of each report: (a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was subject to full and open competition or a sole source acquisition; (e) name of the EPA Project Officer and the EPA Project Officer's office identification and location; and (f) date of report.

(End of clause)

[50 FR 14360, Apr. 11, 1985; 50 FR 15425, Apr. 18, 1985. Redesignated at 55 FR 39622, Sept. 28, 1990, as amended at 60 FR 21994, May 4, 1995. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.211–79 Compliance with EPA Policies for Information Resources Management.

As prescribed in 1511.011–79, insert the following clause:

COMPLIANCE WITH EPA POLICIES FOR INFORMATION RESOURCES MANAGEMENT (SEP 1991)

(a) *Definition*. Information Resources Management (IRM) is defined as any planning, budgeting, organizing, directing, training, promoting, controlling, and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both information itself, and the management of information and related resources such as personnel, equipment, funds, and technology. Examples of these services include but are not limited to the following:

(1) The acquisition, creation, or modification of a computer program or automated data base for delivery to EPA or use by EPA or contractors operating EPA programs.

(2) The analysis of requirements for, study of the feasibility of, evaluation of alternatives for, or design and development of a computer program or automated data base for use by EPA or contractors operating EPA programs.

(3) Services that provide EPA personnel access to or use of computer or word processing equipment, software, or related services.

(4) Services that provide EPA personnel access to or use of: Data communications; electronic messaging services or capabilities; electronic bulletin boards, or other forms of electronic information dissemination; electronic record-keeping; or any other automated information services.

(5) Services that are subject to the Brooks Act of 1965, as amended (Pub. L. 89–306).

(b) *General*. The Contractor shall perform any IRM related work under this contract in accordance with the IRM policies, standards and procedures set forth in this clause and noted below. Upon receipt of a work request (i.e. delivery order or work assignment), the Contractor shall check this listing of directives (see paragraph (d) for electronic access). The applicable directives for performance of the work request are those in effect on the date of issuance of the work request.

(1) IRM Policies, Standards and Procedures. The 2100 Series (2100–2199) of the Agency's Directive System contains the majority of the Agency's IRM policies, standards and procedures.

(2) Groundwater Program IRM Requirement. A contractor performing any work related to collecting Groundwater data; or developing or enhancing data bases containing Groundwater quality data shall comply with *EPA Order 7500.1A—Minimum Set of Data Elements for Groundwater*.

(3) EPA Computing and Telecommunications Services. *The Enterprise Technology Services Division (ETSD) Operational Directives Manual* contains procedural information about the operation of the Agency's computing and telecommunications services. Contractors performing work for the Agency's National Computer Center or those who are developing systems which will be operating on the Agency's national platforms must comply with procedures established in the Manual. (This document is only available through electronic access.)

(c) *Printed Documents*. Documents listed in (b)(1) and (b)(2) may be obtained from: U.S. Environmental Protection Agency Office of Administration Facilities Management and Services Division Distribution Section Mail Code: 3204 401 M Street, S.W. Washington, D.C. 20460 Phone: (202) 260–5797

(d) *Electronic access*. (1) *Internet*. A complete listing, including full text, of documents included in the 2100 Series of the Agency's Directive System, as well as the two other EPA documents noted in this clause, is maintained on the EPA Public Access Server on the Internet. Gopher Access: *gopher.epa.gov* is the address to access the EPA Gopher. Select 'menu keyword search' from the menu and search on the term 'IRM Policy'. Look

for IRM Policy, Standards and Guidance. World Wide Web Access: *http://www.epa.gov* is the address for the EPA's www homepage. From the homepage, search on the term 'IRM Policy' and look for IRM Policy, Standards and Guidance.

(2) *Dial-Up Modem.* All documents, including the listing, are available for browsing and electronic download through a dial-up modem. Dial (919) 558–0335 for access to the menu that contains the listing for EPA policies. Set the communication parameters to 8 data bits, no parity, 1 stop bit (8,N,1) Full Duplex, and the emulator to VT–100. The information is the same whether accessed through dial-up or the Internet. For technical assistance, call 1–800–334–2405.

(End of Clause)

[56 FR 42236, Aug. 27, 1991, as amended at 61 FR 33693, June 28, 1996. Redesignated at 61 FR 57339, Nov. 6, 1996, as amended at 62 FR 33573, June 20, 1997]

1552.213–70 Notice to suppliers of equipment.

As prescribed in 1513.507(b), the Contracting Officer shall insert the following contract clause in orders for or lease of commercially available equipment.

NOTICE TO SUPPLIERS OF EQUIPMENT (APR 1984)

(a) It is the general policy of the Environmental Protection Agency that Contractor or vendor prescribed leases or maintenance agreements for equipment will NOT be executed.

(b) Performance in accordance with the terms and conditions of the vendor's commercial lease, or customer service maintenance agreement, unless specified in the Schedule, may render the vendor's performance unacceptable, thereby permitting the Government to apply such contractual remedies as may be permitted by law, regulation, or the terms of this order.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.214–71 Contract award—other factors—formal advertising.

As prescribed in 1514.201–6(b), insert the following solicitation provision in invitations for bids (IFB) when it is appropriate to describe other factors that will be used in evaluating bids for award. This provision is used to describe the other factors mentioned in the solicitation provisions ''Contract Award—Formal Advertising'' (FAR 52.214–10), and ''Contract Award—Construction'' (FAR 52.214–19). All other evaluation provisions in the IFB (e.g., evaluation of options) should be cross-referenced in this provision. The other factors set forth in the provision should represent a consolidated statement of the exact basis upon which bids will be evaluated for award.

CONTRACT AWARD—OTHER FACTORS—FORMAL ADVERTISING (APR 1984)

The Government will award a contract resulting from this solicitation as stated in the ''Contract Award'' provision. The other factors that will be considered are:

_____

_____

_____

(End of provision)

1552.215–70 EPA Source selection and selection procedures—negotiated procurements. (Sep 1996)

As prescribed in 1515.605, insert the following provision.

EPA SOURCE EVALUATION AND SELECTION PROCEDURES—PROCUREMENTS (SEP 1996)

(a) The Government will perform source selection in accordance with FAR Part 15 and the EPA Source Evaluation and Selection Procedures in EPAAR Part 1515 (48 CFR Part 1515). The significant features of this procedure are:

(1) The Government will perform either cost analysis or price analysis of the offeror's cost/business proposal in accordance with FAR Parts 15 and 31, as appropriate. In addition, the Government will also evaluate proposals to determine contract cost or price realism.

Cost or price realism relates to an offeror's demonstrating that the proposed cost or price provides an adequate reflection of the offeror's understanding of the requirements of this solicitation, i.e., that the cost or price is not unrealistically low or unreasonably high.

(2) The Government will evaluate technical proposals as specified in 1552.215–71, Evaluation Factors for Award.

(b) In addition to evaluation of the previously discussed elements, the Government will consider in any award decision the responsibility factors set forth in FAR Part 9.

(End of Provision)

[61 FR 47067, Sept. 6, 1996, as amended at 61 FR 57339, Nov. 6, 1996]

1552.215–71 Evaluation factors for award.

As prescribed in 1515.605, insert one of the following provisions.

EVALUATION FACTORS FOR AWARD (SEP 1996)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly more important than cost or price.

(b) Technical Evaluation Criteria:

(End of Provision)

EVALUATION FACTORS FOR AWARD (SEP 1996)

ALTERNATE I (SEP 1996)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

(b) Technical Evaluation Criteria:

(End of Provision)

EVALUATION FACTORS FOR AWARD—PROPOSAL MEETS THE MINIMUM NEEDS OF THE GOVERNMENT WITH THE LOWEST EVALUATED COST/PRICE

Alternate II (SEP 1996)

(a) The Government will make award to the lowest-evaluated cost or price, technically acceptable, responsible offeror whose offer meets the minimum needs of the Government. In the event that there are two or more technically acceptable, equal price (cost) offers, the Government will consider other factors, as listed below in descending order of importance:

(b) Technical Evaluation Criteria:

(End of Provision)

EVALUATION FACTORS FOR AWARD (SEP 1996)

ALTERNATE III (SEP 96)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) Technical Evaluation Criteria:

(End of Provision)

[61 FR 47067, Sept. 6, 1996]

1552.215–73 Instructions for the preparation of technical and cost or pricing proposals.

As prescribed in 1515.407(a), insert the following provision:

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND COST OR PRICING PROPOSALS (AUG. 1993)

(a) Technical proposal instructions.

(1) Submit your technical proposal as a separate part of the total proposal package. Omit all cost or pricing details from the technical proposal. Include the following elements in your technical proposal (see also the Statement of Work and the Technical Evaluation Criteria):

(i) Technical approach;

(ii) Technical management;

(iii) Key technical personnel;

(iv) Assumptions, deviations, and exceptions (as necessary); and

(v) Additional information.

(2) Special technical proposal instructions.

(b) Cost or pricing proposal instructions.

Your cost or price proposal shall be specific, complete in every detail, and separate from your technical proposal. In addition to a hard copy of the information, to expedite review of your proposal, you are requested to submit a computer disk containing the financial data required under 1552.21573(b)(2) through (b)(9), if this information is available using a commercial spreadsheet program on a personal computer. Please indicate the software program used to create this information. Offerors should include the formulas and factors used in calculating the financial data on the disk as well as the

basic financial information. Although submission of the computer disk will expedite review, failure to submit the disk will not affect consideration of your proposal.

(1) General—Submit cost or pricing data on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with FAR 15.804–6, FAR Table 15–3, and the following:

(i) Clearly identify separate cost or pricing data associated with any:

(A) Options to extend the term of the contract;

(B) Options for the Government to order incremental quantities; and/or

(C) Major tasks, if required by the special instructions.

You may indicate the above cost or price detailed data in narrative form or on a spread sheet, provided that all cost or pricing data is adequately and clearly described. Place recap/summary information on the SF 1411.

(ii) Clearly identify all costs and data in support of the proposed cost/price. Include the index required by FAR 15.804, Table 15–2 Paragraph 4.

(iii) Submit a current financial statement, including a balance sheet and a statement of profit and loss for the last completed fiscal year. Specify resources available to perform the contract without assistance from any outside source. If sufficient resources are not available, indicate in your proposal the amount required and the anticipated source (i.e., bank loans, letter or lines of credit, etc.).

(iv) If other division, subsidiaries, a parent or affiliated companies will perform work or furnish materials under this proposed contract, please provide the name and location of such affiliate and your intercompany pricing policy. Separately identify costs and supporting data for each such entity proposed.

(v) If the contract schedule includes a ''Fixed Rates for Services'' clause, please provide in your cost proposal a schedule duplicating the format in the clause and include your proposed fixed hourly rates per labor category for the base and any option contract periods.

(vi) If the contract includes the clause at EPAAR 1552.232–73, ''Payments—Fixed-Rate Services Contract,'' or the clause at FAR 52.232–7, ''Payments Under Time and Materials and Labor-Hour Contracts,'' include in your cost proposal the estimated costs and burden rate you will apply to materials, other direct costs, or subcontracts. The Government will include these costs as part of its cost proposal evaluation.

(vii) Whenever subcontractor effort is included in the proposed costs, the prime contractor shall include an additional supporting cost summary consolidating all costs (both contractor and subcontractor) by element for each contract period.

(2) Direct Labor.

(i) Attach support schedules for each proposed labor category, indicating both proposed hours and rates. Explain the basis of the proposed labor rates, including a complete justification for all judgmental factors used to develop weights applied to your company's category or individual rates that comprise the rates for labor categories specified in the solicitation. This explanation should describe how your technical approach coincides with the proposed costs.

Describe for each labor category proposed your company's qualifications and experiences requirements. If individual rates are used, also provide the employee's name. If specific individuals are identified in the technical proposal, correlate these individuals with the labor categories specified in the solicitation.

Provide a matrix summarizing the effort proposed, including the subcontracts, by professional and technical level specified in the solicitation.

(ii) Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. The methodology shall include the effective date of the base rates and the policy on salary reviews (e.g. anniversary date of employee or salary reviews for all employees on a specific date).

(iii) State whether any additional direct labor (new hires) will be required during the performance period of this acquisition. If so, state the number required.

(iv) With respect to educational institutions, include the following information for those professional staff members whose salary is expected to be covered by a stipulated salary support agreement pursuant to OMB Circular A–21.

(A) Individual's name;

(B) Annual salary and the period for which the salary is applicable;

(C) List of other research projects or proposals for which salary is allocated, and the proportionate time charged to each; and

(D) Other duties, such as teaching assignments, adminstrative assignments, and other institutional activities. Show the proportionate time charged to each. (Show proportionate time charges as a percentage of 100% of time for the entire academic year, exclusive of vacation or sabbatical leave.)

(3) Indirect costs (overhead, general, and administrative expenses). Unless your proposed indirect rate(s) have recently been accepted by a contracting agency of the Government, provide detailed supporting computations. These computations may include historical as well as budgeted data. Indicate whether your computations are based upon historical or projected data. If your rates have been recently approved, include a copy of the agreement. If the agreement does not cover the projected performance period of the proposed effort, provide the rationale

and any estimated rate calculations for the proposed performance period.

(4) Travel expense.

(i) Attach a schedule illustrating how travel was computed. Include a breakdown indicating the number of trips, number of travellers, destination, purpose and cost.

(ii) If the solicitation specifies the amount of travel costs, this amount is exclusive of any applicable indirect costs and fee.

(5) Consultant service.

Identify the contemplated consultants. State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

(6) When the cost of a subcontract is substantial (25 percent of the estimated contract value or $10,000, whichever is less), include details of subcontract costs in the same format as the prime Contractor's costs. Include a cost or price analysis of the subcontract costs in accordance with FAR 15.806–1(a)(2).

(7) Equipment (not including special equipment).

(i) If direct charges for use of existing contractor equipment are proposed, provide a description of these items and details of the basis of such charges.

(ii) If equipment purchases are proposed, provide a description of these items, details of the proposed costs (including at least three price quotes), and a justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(iii) Identify Government-owned property in the possession of the offeror or proposed to be used in the performance of the contract, and the Government agency which has cognizance over the property.

(8) Facilities and special equipment, including tooling.

(i) If special purpose facilities or equipment is being proposed, provide a description of these items, details of the proposed costs including competitive prices, and justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(ii) If fabrication by the prime Contractor is contemplated, include details of material, labor, and overhead.

(9) Other Direct Costs.

(i) Attach a schedule detailing how other direct costs were computed. Identify the major ODC items that under your accounting system would be a direct change on any resulting contract.

(ii) If the solicitation specifies the amount of other direct costs, this amount is exclusive of any applicable indirect cost and fee.

(END OF PROVISION)

Alternate I (AUG 1993). If this solicitation is for a cost-reimbursable, level of effort type contract, add the following at the end of paragraph (b)(2)(i):

All management and support (such as clerical, corporate and day-to-day management) hours and costs proposed to be a direct charge, in accordance with your normal accounting treatment, are to be shown separately from that for the technical effort.

Alternate II (AUG 1993). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year = 2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e. productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52wks/yr = 1950 hrs). It should also clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave.

The amount of indirect time (paid absences) identified in your proposal must be consistent with company policy and must allow for the ten Federal Government holidays.

Alternate III (AUG 1993). If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is not on a Government facility, add the following paragraph (b)(2)(v) to the basic provision:

(v) The level of effort for each position is to be proposed in workyears. A workyear is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year =2080 hours). Your proposal must identify proposed workyears and clearly identify how many hours in each workyear are direct (i.e. productive working hours) and how many are indirect (i.e. paid absences). If your company policy includes a different base work week, your total available hours would be different. For example, if your company's policy calls for a 37.5 hour work week, you would deduct your paid absences from 1950 hours (37.5 hr/wk × 52 wks/yr = 1950 hrs).

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984, as amended at 58 FR 45844, 45846, Aug. 31, 1993]

1552.215–74 Cost proposal instructions.

As prescribed in 1515.407(c), insert a provision substantially as follows in negotiated procurement solicitation documents when cost or pricing data is required in an offeror's proposal and it is necessary to obtain the detailed cost data specified in the provision. While designed to obtain cost data for procurements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (''Super Fund'') program, the provision may be used in other negotiated solicitations.

COST PROPOSAL INSTRUCTIONS (AUG 1993)

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. Categories of labor to be employed, for example, and the associated number of estimated hours per category, shall be clearly identified. All items of equipment, together with estimated usage hours, shall be set forth. All material costs, travel and per diem costs, analysis costs, and transportation and disposal costs shall be identified as well. Where proposed rates are not based upon catalog or list prices, the basis for the proposed rates shall be identified. Equipment rates may be proposed on any basis (e.g., hourly, daily, weekly, monthly).

The cost proposal shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with general instructions in FAR 15.804–6 and FAR Table 15–3. Summary data should be placed on SF 1411, and the following format should be followed in preparing the detailed cost proposal. All items which are subcontracted should be clearly identified and should include the name and address of the proposed subcontractor. Written quotations for all subcontracted services must accompany your cost proposal.

(a) Direct Labor

Labor categories	Estimated hours	Rate/hour	Total
(1) Technical Direct Labor			
.....	.....	$	$.....
.....	.....	$	$.....
.....	.....	$	$.....
Technical direct labor cost subtotal.	.....	.....	$.....
(2) Management Direct Labor			
.....	.....	$	$.....
.....	.....	$	$.....
.....	.....	$	$.....
Management direct labor cost subtotal.	.....	.....	$.....
Total direct labor cost subtotal.	.....	.....	$.....

If it is your company's policy to charge project/program management labor as an indirect charge, state your policy in your proposal.

(b) Equipment.

Item description	Estimated usage	Rate (dollars)	Total (dollars)
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Equipment cost subtotal	.....	.....	.....

(c) Travel and subsistence.

(1) Travel.

Number of persons	From	To	Mileage	Cost per trip (dollars)	Total (dollars)
.....	.....	....	.....	.....	.....
.....	.....	....	.....	.....	.....

(2) Subsistence.

Number of persons	Number of days	Rate per day (dollars)	Total (dollars)
.....	.....	.....	.....
.....	.....	.....	.....
Travel and per diem subtotal	.....	.....	.....

(d) Materials and safety equipment.

Item description	Estimated quantity	Unit price (dollars)	Total (dollars)
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Material cost subtotal	.....	.....	.....

(e) Sampling and analytical services.

Type of analysis	Number of analyses	Price per analysis (dollars)	Total (dollars)
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Analytical cost subtotal	.....	.....	.....

(f) Transportation.

Type of material	Size of load	Number of miles	Estimated number of loads	Dollar per mile or dollar per load	Total (dollars)
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Transportation cost subtotal	.....	.....	.....	.....	.....

(g) Disposal.

Type of material	Method of disposal	Estimated quantity	Dollar per gallon or dollar per ton	Total (dollars)
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Disposal cost subtotal.	.....	.....	.....	.....

(h) Other Miscellaneous Services or Charges.

Include in this category any costs associated with mobilization and/or demobilization, handling charges on materials or subcontracts, and any other estimated costs not included in the above categories.

(PLEASE ITEMIZE AND PROVIDE BREAKDOWNS WHERE APPLICABLE)

Other Costs Subtotal $ _____

(End of provision)

[49 FR 8867, Mar. 8, 1984, as amended at 58 FR 45846, Aug. 31, 1993]

1552.215–75 [Reserved]

1552.215–76 General financial and organizational information.

As prescribed in 1515.407(a)(3), insert the following provisions:

GENERAL FINANCIAL AND ORGANIZATIONAL INFORMATION (APR 1984)

Offerors or quoters are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at EPA or update all outdated information on file.

(a) Contractor's Name: _____.

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

(c) Telephone Number: _____.

(d) Individual(s) to contact re this proposal:

(e) Cognizant Government:

Audit Agency: _____

Address: _____

Auditor: _____

(f)(1) Work Distribution for the Last Completed Fiscal Accounting Period:

Sales:

Government cost-reimbursement type prime contracts and subcontracts ..... $.....

Government fixed-price prime contracts and subcontracts ... $.....

Commercial sales ..... $.....

Total sales ..... $.....

(2) Total sales for first and second fiscal years immediately preceding last completed fiscal year.

Total sales for first preceding fiscal year ..... $.....

Total sales for second preceding fiscal year ..... $.....

(g) Is company a separate entity or division?

If a division or subsidiary corporation, name parent company:

(h) Date Company Organized: _____.

(i) Manpower:

Total Employer: _____

Direct: _____

Indirect: _____

Standard Work Week (Hours): _____

(j) Commercial Products: _____.

(k) Attach a current organizational chart of the company.

(l) Description of Contractor's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/actual cost	Standard cost
Estimating System:		
Job Order	.....	.....
Process	.....	.....
Accumulating System:		
Job Order	.....	.....
Process	.....	.....

Has your cost estimating system been approved by any Government agency?

Yes ____ No ____

If yes, give name and address of agency:

Has your cost accumulation system been approved by any Government agency?

Yes ____ No ____

If yes, give name and address of agency:

_____

(m) What is your fiscal year period? (Give month-to-month dates):

_____

What were the indirect cost rates for your last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits		
Overhead		
G&A Expense		
Other		

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?

Yes ____ No ____

If yes, name and location of the Government agency:

_____

Date of last preaward audit review by a Government agency: _____.

(If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.)

(o) Cost estimating is performed by:

Accounting Department _____

Contracting Department _____

Other _____

(describe)

(p) Has system of control of Government property been approved by a Government agency?

Yes ____ No ____

If yes, name and location of the Government agency:

_____

(q) Purchasing System: FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $10 million (annual billings) during the next twelve months. The $10 million sales threshold is comprised of prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation). Has your purchasing system been approved by a Government agency?

Yes _____ No _____

If yes, name and location of the Government agency:

_____

Period of Approval: _____

If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the $10 million threshold?

Yes _____ No _____

If you respond yes to the $10 million threshold question, is EPA the cognizant agency for your organization based on the preponderance of Government contract dollars?

Yes _____ No _____

If EPA is not your cognizant Government agency, provide the name and location of the cognizant agency _____

_____

Are your purchasing policies and procedures written?

Yes _____ No _____

(r) Does your firm have an established written incentive competition or bonus plan?

Yes ____ No ____

(End of provision)

(Approved by the Office of Management and Budget under control number 2030–0006)

[49 FR 8867, Mar. 8, 1984, as amended at 54 FR 36980, Sept. 6, 1989; 55 FR 13535, Apr. 11, 1990]

1552.216–70 Award Fee.

As prescribed in 1516.405(a), insert the following clause:

AWARD FEE (SEPT 1995)

(a) The Government shall pay the contractor a base fee, if any, and such additional fee as may be earned, as provided in the award fee plan incorporated into the Schedule.

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO) and are not subject to appeal under the Disputes clause.

(c) The Government may unilaterally change the award fee plan at any time, via contract modification, at least thirty (30) calendar days prior to the beginning of the applicable evaluation period. Changes issued in a unilateral modification are not subject to equitable adjustments, consideration, or any other renegotiation of the contract.

(End of Clause)

[60 FR 43404, Aug. 21, 1995]

1552.216–71 Date of incurrence of cost.

At prescribed in 1516.307, insert the following contract clause in cost-reimbursement contracts when an anticipatory cost letter has been issued on the project. The beginning dates and the not-to-exceed amount to be inserted in the clause should be those in the anticipatory cost letter.

DATE OF INCURRENCE OF COST (APR 1984)

The Contractor is entitled to reimbursement for allowable, allocable costs incurred during the period of _____ to the award date of this contract in an amount not to exceed
$ _____
All terms and conditions of this contract are in effect from

_____

(End of clause)

1552.216–72 Ordering—by designated ordering officers.

As prescribed in 1516.505(a), insert the following in indefinite delivery/indefinite quantity contracts.

ORDERING—BY DESIGNATED ORDERING OFFICERS (APR 1984)

(a) The Government will order any supplies and services to be furnished under this contract by issuing delivery orders on Optional Form 347, or any agency prescribed form, from _____ through _____. In addition to the Contracting Officer, the following individuals are authorized ordering officers.

_____

_____

(b) A Standard Form 30 will be the method of amending delivery orders.

(c) The Contractor shall acknowledge receipt of each order and shall prepare and forward to the Ordering Officer within ten (10) calendar days the proposed staffing plan for accomplishing the assigned task within the period specified.

(d) If the Contractor considers the estimated labor hours or specified work completion date to be unreasonable, he/she shall promptly notify the Ordering Officer and Contracting Officer in writing within 10 calendar days, stating why the estimated labor hours or specified completion date is considered unreasonable.

(e) Each delivery order will have a ceiling price, which the Contractor may not exceed. When the Contractor has reason to believe that the labor payment and support costs for the order, which will accrue in the next thirty (30) days, will bring total cost to over 85 percent of the ceiling price specified in the order, the Contractor shall notify the Ordering Officer.

(f) Paragraphs (c), (d), and (e) of this clause apply only when services are being ordered.

(End of clause)

1552.216–73 Fixed rates for services—indefinite delivery/indefinite quantity contract.

As prescribed in 1516.505(b), insert the following clause to specify fixed rates for services in indefinite delivery/indefinite quantity contracts. When the contract contains options, the clause should be modified to reflect the information and data for the base period and any option periods.

FIXED RATES FOR SERVICES—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT (APR 1984)

The following fixed rates shall apply for payment purposes for the duration of the contact.

Personnel classification	Skill level	Estimated direct labor hours	Fixed hourly rate	Total
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

The rate, or rates, set forth above cover all expenses, including report preparation, salaries, overhead, general and administrative expenses, and profit.

The Contractor shall voucher for only the time of the personnel whose services are applied directly to the work called for in individual Delivery Orders and accepted by the EPA Project Officer. The Government shall pay the Contractor for the life of a delivery order at rates in effect when the delivery order was issued, even if performance under the delivery order crosses into another period. The Contractor shall maintain time and labor distribution records for all employees who work under the contract. These records must document time worked and work performed by each individual on all Delivery Orders.

(End of clause)

1552.216–74 Payment of fee.

As prescribed in 1516.307(b), insert the following clause:

PAYMENT OF FEE (MAY 1991)

(a) The term *fee* in this clause refers to either the fixed fee under a cost-plus-fixed-fee type contract, or the base fee under a cost-plus-award-fee type contract.

(b) The Government will make provisional fee payments on the basis of percentage of work completed. Percentage of work completed is the ratio of direct labor hours performed to the direct labor hours set forth in clause 1552.212–70, *Level of Effort—Cost-Reimbursement Term Contract.*

(End of clause)

[56 FR 43711, Sept. 4, 1991]

1552.216–75 Base fee and award fee proposal.

As prescribed in 1516.405(b), insert the following clause.

BASE FEE AND AWARD FEE PROPOSAL (SEPT 1995)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee within the maximum fee limitation of _____% as stated in FAR 15.903(d). Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than _____% of the total estimated cost, excluding fee. The combined percentage of base and award fee does not exceed _____% of the total estimated cost, excluding fee.

(End of Clause)

[60 FR 43404, Aug. 21, 1995]

1552.216–76 Estimated cost and cost-sharing.

As prescribed in 1516.307(c), insert the following clause:

ESTIMATED COST AND COST-SHARING (APR 1996)

(a) The total estimated cost of performing the work under this contract is $_____. The Contractor's share of this cost shall not exceed $_____. The Government's share of this cost shall not exceed $_____.

(b) For performance of the work under the contract, the Contractor shall be reimbursed for not more than _____ percent of the cost of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining balance of allowable cost shall constitute the Contractor's share.

(c) Fee shall not be paid to the prime contractor under this cost-sharing contract.

(d) The Contractor shall maintain records of all costs incurred and claimed for reimbursement as well as any other costs claimed as part of its cost share. Those records shall be subject to audit by the Government.

(e) Costs contributed by the Contractor shall not be charged to the Government under any other contract, grant or agreement (including allocation to other contracts as part of an independent research and development program) nor be included as contributions under any other Federal contract.

(End of Clause)

[61 FR 14505, Apr. 2, 1996]

1552.217–70 Evaluation of contract options.

As prescribed in 1517.208(a), insert the following solicitation provision in Requests for Proposals when the solicitation contains options.

EVALUATION OF CONTRACT OPTIONS (APR 1984)

For award purposes, in addition to an offeror's response to the basic requirement, the Government will evaluate its response to all options, both technical and cost. Evaluation of options will not obligate the Government to exercise the options. For this solicitation the options are as specified in section H.

(End of provision)

1552.217–71 Option to extend the term of the contract—cost-type contract.

As prescribed in 1517.208(b), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-TYPE CONTRACT (APR 1984)

The Government has the option to extend the term of this contract for _____ additional period(s). If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is _____ direct labor hours for the first option period and _____ for the second. Use of an option will result in the following contract modifications:

(a) The ''Period of Performance'' clause will be amended to cover a base period from ___ to —___ and option periods from ___ to ___ and ___ to ___.

(b) Paragraph (a) of the ''Level of Effort'' clause will be amended to reflect a new and separate level of effort of ___ for the first option period and a new and separate level of effort of ___ for the second option period.

(c) The ''Estimated Cost and Fixed Fee'' clause will be amended to reflect increased estimated costs and fixed fee for each option period as follows:

	Option 1	Option 2
Estimated cost		
Fixed fee		

	Option 1	Option 2
Total	.....	.....

(d) If the contract contains ''not to exceed amounts'' for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2
.....	.....	.....
.....	.....	.....
.....	.....	.....

(End of clause)

1552.217–72 Option to extend the term of the contract—cost-plus-award-fee contract.

As prescribed in 1517.208(c), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

OPTION TO EXTEND THE TERM OF THE CONTRACT—COST-PLUS-AWARD-FEE CONTRACT (APR 1984)

(a) The Government has the option to extend the term of this contract for _____ additional periods. If more than 60 days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last 60 days of the period of performance, the Government must provide to the Contractor written notification prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option. The Government's estimated level of effort is _____ direct labor hours for the first option period and _____ for the second. Use of an option will result in the following contract modifications:

(b) The ''Period of Performance'' clause will be amended to cover a base period from ____ to ____ and option periods from ____ to ____ and ____ to ____.

(c) Paragraph (a) of the ''Level of Effort'' clause will be amended to reflect a new and separate level of effort of ____ for the first option period and a new and separate level of effort of ____ for the second option period.

(d) The ''Estimated Cost Base Fee and Award Fee'' clause will be amended to reflect increased estimated costs and base fee and award fee pool for each option period as follows:

	Option 1	Option 2
Estimated cost	.....	.....
Base fee	.....	.....
Award fee pool	.....	.....
Total	.....	.....

(e) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODC), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217–73 Option for increased quantity—cost-type contract.

As prescribed in 1517.208(d), insert this contract clause in cost-reimbursement type term form contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, modify the clause accordingly.

OPTION FOR INCREASED QUANTITY—COST-TYPE CONTRACT (APR 1984)

(a) By issuing a contract modification, the Government may increase the estimated level of effort by _____ direct labor hours during the base period, _____ during the first option period, and _____ during the second option period. The Government may issue a maximum of _____ orders to increase the level of effort in blocks of _____ hours during any given period. The estimated cost and fixed fee of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost	.....	.....	.....
Fixed fee	.....	.....	.....
Total	.....	.....	.....

(b) When these options are exercised, paragraph (a) of the ''Level of Effort'' clause and the ''Estimated Cost and Fixed Fee'' clause will be modified accordingly.

(c) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODCs), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(END OF CLAUSE)

[49 FR 8867, Mar. 8, 1984, as amended at 62 FR 37149, July 11, 1997]

1552.217–74 Option for increased quantity—cost-plus-award-fee contract.

As prescribed in 1517.208(e), insert this contract clause in cost-plus-award-fee term contracts when applicable. If only one option period is used, enter ''NA'' in the proper places of the clause. If more than two option periods apply, the clause may be modified accordingly.

OPTION FOR INCREASED QUANTITY—COST-PLUS-AWARD-FEE CONTRACT (APR 1984)

(a) By issuing a contract modification, the Government may increase the estimated level of effort by _____ direct labor hours during the base period, _____ during the first option period, and _____ during the second option period. The Government may issue a maximum of _____ orders to increase the level of effort in blocks of _____ hours during any given period. The estimated cost, base fee, and award fee pool of each block of hours is as follows:

	Base period	Option 1	Option 2
Estimated cost	.....	.....	.....
Base fee	.....	.....	.....
Award fee pool	.....	.....	.....
Total	.....	.....	.....

(b) When these options are exercised, paragraph (a) of the ''Level of Effort'' clause and the ''Estimated Cost, Base Fee, and Award Fee'' clause will be modified accordingly.

(c) If this contract contains ''not to exceed amounts'' for elements of other direct costs (ODCs), those amounts will be increased as follows:

Other direct cost item	Option 1	Option 2

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 62 FR 37149, July 11, 1997]

1552.217–75 Option to extend the effective period of the contract—time and materials or labor hour contract.

As prescribed in 1517.208(f), insert this clause in time and materials or labor hour type contracts when applicable. This clause will be modified to reflect the actual number of option periods for the acquisition. If only one option period is used, modify (c) accordingly.

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—TIME AND MATERIALS OR LABOR HOUR CONTRACT (APR 1984)

(a) The Government has the option to extend the effective period of this contract for _____ additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the option(s) are exercised, the ''Ceiling Price'' clause will be modified to reflect a new and separate ceiling price of $___ for the first option period and a new and seperate ceiling price of $___ for the second option period.

(c) The ''Effective Period of the Contract'' clause will be modified to cover a base period from _____ to _____ and option periods from _____ to _____ and _____ to _____.

(End of clause)

[49 FR 8867, Mar. 8, 1984; 49 FR 24734, June 15, 1984]

1552.217–76 Option to extend the effective period of the contract—indefinite delivery/indefinite quantity contract.

As prescribed in 1517.208(g), the following is used in indefinite delivery/indefinite quantity type contracts with options to extend the effective period of the contract. The clause may be adjusted depending upon the number of options. If only one option period is used, modify (b) and (c) accordingly.

OPTION TO EXTEND THE EFFECTIVE PERIOD OF THE CONTRACT—INDEFINITE DELIVERY/INDEFINITE QUANTITY CONTRACT

(a) The Government has the option to extend the effective period of this contract for _____ additional period(s). If more than sixty (60) days remain in the contract effective period, the Government, without prior written notification, may exercise this option by issuing a contract modification. To unilaterally exercise this option within the last 60 days of the effective period, the Government must issue written notification of its intent to exercise the option prior to that last 60-day period. This preliminary notification does not commit the Government to exercising the option.

(b) If the options are exercised, the ''Minimum and Maximum Contract Amount'' clause will be modified to reflect new and separate minimums of _____ for the first option period and _____ for the second option period, and new and separate maximums of _____ for the first option period and _____ for the second option period.

(c) The ''Effective Period of the Contract'' clause will be modified to cover a base period from _____ to _____ and option periods from _____ to _____ and _____ to _____.

(End of clause)

1552.223–70 Protection of human subjects.

As prescribed in 1523.303–70, insert the following contract clause when the contract involves human test subjects.

PROTECTION OF HUMAN SUBJECTS (APR 1984)

(a) The Contractor shall protect the rights and welfare of human subjects in accordance with the procedures specified in its current Institutional Assurance on file with the Agency. The Contractor shall certify at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the appliable Institutional Assurance accepted by the Agency.

(b) The Contractor shall bear full responsibility for the proper and safe performance of all work and services involving the use of human subjects under this contract.

(End of clause)

1552.224–70 Social security numbers of consultants and certain sole proprietors and Privacy Act statement.

As prescribed in 1524.104, insert the following provision in all solicitations.

SOCIAL SECURITY NUMBERS OF CONSULTANTS AND CERTAIN SOLE PROPRIETORS AND PRIVACY ACT STATEMENT (APR 1984)

(a) Section 6041 of title 26 of the U.S. Code requires EPA to file Internal Revenue Service (IRS) Form 1099 with respect to individuals who receive payments from EPA under purchase orders or contracts. Section 6109 of title 26 of the U.S. Code authorizes collection by EPA of the social security numbers of such individuals for the purpose of filing IRS Form 1099. Social security numbers obtained for this purpose will be used by EPA for the sole purpose of filing IRS Form 1099 in compliance with section 6041 of title 26 of the U.S. Code.

(b) If the offeror or quoter is an individual, consultant, or sole proprietor and has no Employer Identification Number, insert the offeror's or quoter's social security number on the following line.

(End of provision)

1552.227–76 Project employee confidentiality agreement.

As prescribed in 1527.409, insert the following clause:

PROJECT EMPLOYEE CONFIDENTIALITY AGREEMENT (MAY 1994)

(a) The Contractor recognizes that Contractor employees in performing this contract may have access to data, either provided by the Government or first generated during contract performance, of a sensitive nature which should not be released to the public without Environmental Protection Agency (EPA) approval. Therefore, the Contractor agrees to obtain confidentiality agreements from all of its employees working on requirements under this contract.

(b) Such agreements shall contain provisions which stipulate that each employee agrees that the employee will not disclose, either in whole or in part, to any entity external to EPA, the Department of Justice, or the Contractor, any information or data (as defined in FAR Section 27.401) provided by the Government or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the EPA Contracting Officer. If a contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the EPA so that the EPA can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to prevent the unauthorized disclosure of information to outside entities. If such a disclosure occurs without the written permission of the EPA Contracting Officer, the Government may terminate the contract, for default or convenience, or pursue other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the Contracting Officer.

(End of clause)

[59 FR 18624, Apr. 19, 1994]

1552.229–70 State and local taxes.

As prescribed in 1529.401–70, insert the following clause:

STATE AND LOCAL TAXES (NOV 1989)

In accordance with FAR 29.303 and FAR 31.205–41, the Contractor or any subcontractor under this contract shall not be reimbursed for payment of any State and local taxes for which an exemption is available. The Contractor is responsible for determining the availability of State and local tax exemptions and obtaining such exemptions, if available. The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts at any tier. The Contractor shall notify the Contracting Officer if problems arise in obtaining a State and local tax exemption. The contractor may seek a waiver by the Contracting Officer from this requirement if the administrative burden of seeking an exemption appears to outweigh the potential savings to the Government.

(End of clause)

[54 FR 49998, Dec. 4, 1989]

1552.232–70 Submission of invoices.

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (JUN 1996)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following contract requirements in addition to the requirements of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted as an original and five copies. The Contractor shall submit the invoice or request for contract financing payment to the following offices/individuals designated in the contract: the original and two copies to the Accounting Operations Office shown in Block _____ on the cover of the contract; two copies to the Project Officer (the Project Officer may direct one of these copies to a separate address); and one copy to the Contracting Officer.

(b) The Contractor shall prepare its invoice or request for contract financing payment on the prescribed Government forms. Standard Forms Number 1034, Public Voucher for Purchases and Services other than Personal, shall be used by contractors to show the amount claimed for reimbursement. Standard Form 1035, Public Voucher for Purchases and Services other than Personal—Continuation Sheet, shall be used to furnish the necessary supporting detail or additional information required by the Contracting Officer. The Contractor may submit self-designed forms which contain the required information.

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual work assignments, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each work assignment and for the contract total, as well as any supporting data for each work assignment as identified in the instructions.

(2) The invoice or request for contract financing payment shall include current and cumulative charges by major cost element such as direct labor, overhead, travel, equipment, and other direct costs. For current costs, each major cost element shall include the appropriate supporting schedule identified in the invoice preparation instructions. Cumulative charges represent the net sum of current charges by cost element for the contract period.

(3) The charges for subcontracts shall be further detailed in a supporting schedule showing the major cost elements for each subcontract. The degree of detail for any subcontract exceeding $5,000 is to be the same as that set forth under (c)(2).

(4) The charges for consultants shall be further detailed in the supporting schedule showing the major cost elements of each consultant. For current costs, each major cost element of the consulting agreement shall also include the supporting schedule identified in the invoice preparation instructions.

(d) Invoices or requests for contract financing payment must clearly indicate the period of performance for which payment is requested. Separate invoices or requests for contract financing payment are required for charges applicable to the basic contract and each option period.

(e)(1) Notwithstanding the provisions of the clause of this contract at FAR 52.216–7, Allowable Cost and Payment, invoices or requests for contract financing payment shall be submitted once per month unless there has been a demonstrated need and Contracting Officer approval for more frequent billings. When submitted on a monthly basis, the period covered by invoices or requests for contractor financing payments shall be the same as the period for monthly progress reports required under this contract.

(2) If the Contracting Officer allows submissions more frequently than monthly, one submittal each month shall have the same ending period of performance as the monthly progress report.

(3) Where cumulative amounts on the monthly progress report differ from the aggregate amounts claimed in the invoice(s) or request(s) for contract financing payments covering the same period, the contractor shall provide a reconciliation of the difference as part of the payment request. Alternate I (JUN 1996). If used in a fixed-rate type contract, substitute the following paragraphs (c)(1) and (2) for paragraphs (c)(1) and (2) of the basic clause:

(c)(1) The Contractor shall prepare a contract level invoice or request for contract financing payment in accordance with the invoice preparation instructions identified as a separate attachment in Section J of the contract. If contract work is authorized by individual delivery orders, the invoice or request for contract financing payment shall also include a summary of the current and cumulative amounts claimed by cost element for each delivery order and for the contract total, as well as any supporting data for each delivery order as identified in the instructions.

(2) The invoice or request for contract financing payment that employs a fixed rate feature shall include current and cumulative charges by contract labor category and by other major cost elements such as travel, equipment, and other direct costs. For current costs, each cost element shall include the appropriate supporting schedules identified in the invoice preparation instructions.

[61 FR 29317, June 10, 1996]

1552.232–71—1552.232–72 [Reserved]

1552.232–73 Payments—fixed-rate services contract.

As prescribed in 1532.111, insert the following in indefinite delivery/indefinite quantity contracts with fixed services rates.

PAYMENTS—FIXED-RATE SERVICES CONTRACT (APR 1984)

The Government shall pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) Hourly rate. (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expenses, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the paying office. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job, timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract and subject to the terms of paragraph (e) of this contract, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this contract.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the ''Disputes'' clause of this contract. If the Schedule provides rates for overtime the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) Materials, other direct costs, and subcontracts. (1) The allowability of direct materials and other direct costs shall be determined by the Contracting Officer in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Reasonable and allocable material handling costs or indirect costs may be included in the charge for material or other direct costs to the extent they are clearly excluded from the hourly rate. Material handling and/or indirect cost rates are

specified in the ''Indirect Costs'' clause. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with subpart 31.2 of the FAR. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials or other direct costs, as used in this clause, are those items which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(1) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with paragraph (3) of this clause. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the contract under paragraph (1) of this clause; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(3) To the extent able, the Contractor shall (i) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding paragraph (b)(1) of this contract, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) Contracting Officer notification. For contract administration purposes, the Contractor shall notify the Contracting Officer in writing when the total value of all delivery orders issued exceeds 85 percent of the maximum price specified in the schedule.

(d) Maximum amount. The Government shall not be obligated to pay the Contractor any amount in excess of the maximum amount in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the maximum amount set forth in the Schedule, unless or until the Contracting Officer shall have notified the Contractor in writing that the maximum amount has been increased and shall have specified in the notice a revised maximum that shall constitute the maximum amount for performance under this contract. When and to the extent that the maximum amount set forth in the Schedule has been increased, any hours expended, and material or other direct costs incurred by the Contractor in excess of the maximum amount before the increase, shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the maximum amount.

(e) Audit. At any time before final payment under this contract, the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the ''completion voucher'' or ''completion invoice'' and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraphs (f) and (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event, later than one year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) Assignment. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time

of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(End of clause)

1552.235–70 Screening business information for claims of confidentiality.

As prescribed in 1535.007–70(a), insert the following contract clause in all types of contracts when the Contracting Officer has determined that during performance of this contract, the Contractor may be required to collect information to perform the work required under this contract. Some of the information may consist of trade secrets or commercial or financial information that would be considered as proprietary or confidential by the business that has the right to the information. The following clause enables EPA to resolve any claims of confidentiality concerning the information that the Contractor will furnish under a contract. The clause entitled ''Treatment of Confidential Business Information'' shall also be included in the contract:

SCREENING BUSINESS INFORMATION FOR CLAIMS OF CONFIDENTIALITY (APR 1984)

(a) Whenever collecting information under this contract, the Contractor agrees to comply with the following requirements:

(1) If the Contractor collects information from public sources, such as books, reports, journals, periodicals, public records, or other sources that are available to the public without restriction, the Contractor shall submit a list of these sources to the appropriate program office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(2) If the Contractor collects information from a State or local Government or from a Federal agency, the Contractor shall submit a list of these sources to the appropriate program office at the time the information is initially submitted to EPA. The Contractor shall identify the information according to source.

(3) If the Contractor collects information directly from a business or from a source that represents a business or businesses, such as a trade association:

(i) Before asking for the information, the Contractor shall identify itself, explain that it is performing contractual work for the U.S. Environmental Protection Agency, identify the information that it is seeking to collect, explain what will be done with the information, and give the following notice:

(A) You may, if you desire, assert a business confidentiality claim covering part or all of the information. If you do assert a claim, the information will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR part 2, subpart B.

(B) If no such claim is made at the time this information is received by the Contractor, it may be made available to the public by the Environmental Protection Agency without further notice to you.

(C) The contractor shall, in accordance with FAR part 9, execute a written agreement regarding the limitations of the use of this information and forward a copy of the agreement to the Contracting Officer.

(ii) Upon receiving the information, the Contractor shall make a written notation that the notice set out above was given to

the source, by whom, in what form, and on what date.

(iii) At the time the Contractor initially submits the information to the appropriate program office, the Contractor shall submit a list of these sources, identify the information according to source, and indicate whether the source made any confidentiality claim and the nature and extent of the claim.

(b) The Contractor shall keep all information collected from nonpublic sources confidential in accordance with the clause in this contract entitled ''Treatment of Confidential Business Information'' as if it had been furnished to the Contractor by EPA.

(c) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into any subcontract that will require the subcontractor to collect information. The Contractor agrees to include this clause, including this paragraph (c), and the clause entitled ''Treatment of Confidential Business Information'' in all subcontracts awarded pursuant to this contract that require the subcontractor collect information.

(End of clause)

1552.235–71 Treatment of confidential business information.

As prescribed in 1535.007–70(b), insert the following contract clause in all types of contracts when the Contracting Officer has determined that in the performance of a contract, EPA may furnish confidential business information to the Contractor that EPA obtained under the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. 1251, *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), or the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). EPA regulations on confidentiality of business information in 40 CFR part 2 subpart B require that the Contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the Contractor:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (APR 1984)

(a) The Contracting Officer, after a written determination by the appropriate program office, may disclose confidential business information to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the confidential information only under the following conditions:

(1) The Contractor and Contractor's Employees shall: (i) use the confidential information only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than EPA employees without the prior written approval of the Assistant General Counsel for Contracts and Information Law; and (iii) return to the Contracting Officer all copies of the information, and any abstracts or excerpts therefrom, upon request by the Contracting Officer, whenever the information is no longer required by the Contractor for the performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of confidential information are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(4) The Contractor shall not use any confidential information supplied by EPA or obtained during performance hereunder to compete with any business to which the confidential information relates.

(b) The Contractor agrees to obtain the written consent of the Contracting Officer, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of confidential business information by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded, pursuant to this contract, that require the furnishing of confidential business information to the subcontractor.

(End of clause)

1552.235–72 [Reserved]

1552.235–73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(a), insert the following provision:

ACCESS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''FIFRA Information Security Manual.'' These procedures include applying for FIFRA CBI access authorization for each individual working under the contract who will have access to FIFRA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235- 71, and 1552.235–77 that are appropriate to the activities set forth in the contract.

Until EPA has approved the Contractor's security plan, the Contractor may not be authorized for FIFRA CBI access away from EPA facilities.

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

1552.235–74 [Reserved]

1552.235–75 Access to Toxic Substances Control Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(b), insert the following provision:

ACCESS TO TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Toxic Substances Control Act (TSCA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''TSCA Confidential Business Information Security Manual.'' These procedures include applying for TSCA CBI access authorization for each individual working under the contract who will have access to TSCA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235-71, and 1552.235–78 that are appropriate to the activities set forth in the contract.

Until EPA has inspected and approved the Contractor's facilities, the Contractor may not be authorized for TSCA CBI access away from EPA facilities.

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

1552.235–76 Treatment of Confidential Business Information (Apr 1996).

As prescribed in 1535.007–70(c), insert the following clause:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (TSCA)(APR 1996)

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose confidential business information (CBI) to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the CBI only under the following conditions:

(1) The Contractor and Contractor's employees shall (i) use the CBI only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than properly cleared EPA employees without the prior written approval of the Assistant General Counsel for Information Law or his/her designee; and (iii) return the CBI to the PO or his/her designee, whenever the information is no longer required by the Contractor for performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected businesses having a proprietary interest in the information.

(4) The Contractor shall not use any CBI supplied by EPA or obtained during performance hereunder to compete with any business to which the CBI relates.

(b) The Contractor agrees to obtain the written consent of the CO, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of CBI by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(End of Clause)

[61 FR 14266, Apr. 1, 1996, as amended at 61 FR 57339, Nov. 6, 1996]

1552.235–77 Data Security for Federal Insecticide, Fungicide and Rodenticide Act Confidential Business Information (June 1997)

As prescribed in 1535.007–70(d), insert the following clause:

DATA SECURITY FOR FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (JUNE 1997)

The Contractor shall handle Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality,'' the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all FIFRA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the FIFRA Information Security Manual. The manual may be obtained from the Project Officer (PO) or the Chief, Information Services Branch (ISB), Program Management and Support Division, Office of Pesticide Programs (OPP) (H7502C), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(2) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(3) Prior to receipt of FIFRA CBI by the Contractor, the Contractor shall ensure that all employees who will be cleared for access to FIFRA CBI have been briefed on the handling, control, and security requirements set forth in the FIFRA Information Security Manual.

(4) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA ''Contractor Employee Confidentiality Agreement'' from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of FIFRA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under FIFRA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA (7 U.S.C. 136h(f)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee all documents, logs, and magnetic media which contain FIFRA CBI. In addition, each Contractor employee who has received FIFRA CBI clearance will sign a ''Confidentiality Agreement for Contractor Employees Upon Relinquishing FIFRA CBI Access Authority.'' The Contractor DCO will also forward those agreements to the EPA PO or his/her designee, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

[61 FR 14266, Apr. 1, 1996, as amended at 62 FR 38478, July 18, 1997]

1552.235–78 Data Security for Toxic Substances Control Act Confidential Business Information (June 1997)

As prescribed in 1535.007–70(e), insert the following clause:

DATA SECURITY FOR TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (JUNE 1997)

The Contractor shall handle Toxic Substances Control Act (TSCA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality.''

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose TSCA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all TSCA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the TSCA CBI Security Manual. The manual may be obtained from the Director, Information Management Division (IMD), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA), 401 M Street, SW, Washington, DC 20460. Prior to receipt of TSCA CBI by the Contractor, the Contractor shall ensure that all employees who will be cleared for access to TSCA CBI have been briefed on the handling, control, and security requirements set forth in the TSCA CBI Security Manual.

(2) The Contractor shall permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, and the TSCA Security Staff in the OPPT, or by the EPA Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of EPA Form 7740–6, ''TSCA CBI Access Request, Agreement, and Approval,'' from each of the Contractor's employees who will have access to the information before the employee is allowed access. In addition, the Contractor shall obtain from each employee who will be cleared for TSCA CBI access all information required by EPA or the U.S. Office of Personnel Management for EPA to conduct a Minimum Background Investigation.

(b) The Contractor agrees that these requirements concerning protection of TSCA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under TSCA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in TSCA (15 U.S.C. 2613(d)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee, all documents, logs, and magnetic media which contain TSCA CBI. In addition, each Contractor employee who has received TSCA CBI clearance will sign EPA Form 7740–18, ''Confidentiality Agreement for Contractor Employees Upon Relinquishing TSCA CBI Access Authority.'' The Contractor DCO will also forward those agreements to the EPA OPPT/IMD, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause, when:

(1) The Contractor submits a timely written request for an equitable adjustment; and,

(2) The facts warrant an equitable adjustment.

(End of Clause)

[61 FR 14266, Apr. 1, 1996, as amended at 62 FR 38478, July 18, 1997]

1552.235–79 Release of contractor confidential business information (Apr 1996).

As prescribed in 1535.007–70(f), insert the following clause:

RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR Part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to the following:

(1) To other Agency contractors tasked with assisting the Agency in the recovery of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9607, as amended, (CERCLA or Superfund);

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the Agency and representing the Agency in procedures for the recovery of Superfund expenditures;

(3) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. Sec. 9607), et al, and their insurers (Potentially Responsible Parties) for purposes of facilitating settlement or litigation of claims against such parties;

(4) To other Agency contractors who, for purposes of performing the work required under the respective contracts, require access to information the Agency obtained under the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.);

(5) To other Agency contractors tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(6) To employees of grantees working at EPA under the Senior Environmental Employment (SEE) Program;

(7) To Speaker of the House, President of the Senate, or Chairman of a Committee or Subcommittee;

(8) To entities such as the General Accounting Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(9) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency; and

(10) Pursuant to a court order or court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled ''Screening Business Information for Claims of Confidentiality'' and ''Treatment of Confidential Business Information.'') Except where otherwise provided by law, the Agency will permit the release of CBI under subparagraphs (1), (3), (4), (5), (6), or (9) only pursuant to a confidentiality agreement.

(d) With respect to contractors, 1552.235–71 will be used as the confidentiality agreement. With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA. Such entities include, but are not limited to accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the Contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of clause)

[61 FR 14267, Apr. 1, 1996]

1552.236–70 Samples and certificates.

As prescribed in 1536.521, insert the following contract clause in construction contracts.

SAMPLES AND CERTIFICATES (APR 1984)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance of materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

1552.237–70 Contract publication review procedures.

As prescribed in 1537.110, insert the following contract clause when the products of the contract are subject to contract publication review.

CONTRACT PUBLICATION REVIEW PROCEDURES (APR 1984)

(a) Material generated under this contract intended for release to the public is subject to the Agency's publication review process in accordance with the EPA Order on this subject and the following.

(b) Except as indicated in paragraph (c) of this contract, the Contractor shall not independently publish or print material generated under this contract until after completion of the EPA review process. The Project Officer will notify the Contractor of review completion within ____ calendar days

after the Contractor's transmittal to the Project Officer of material generated under this contract. If the Contractor does not receive Project Officer notification within this period, the Contractor shall immediately notify the Contracting Officer in writing.

(c) The Contractor may publish, in a scientific journal, material resulting directly or indirectly from work performed under this contract, subject to the following:

(1) The Contractor shall submit to the Contracting Officer and the Project Officer, at least 30 days prior to publication, a copy of any paper, article, or other dissemination of information intended for publication.

(2) The Contractor shall include the following statement in a journal article which has not been subjected to EPA review: ''Although the research described in this article has been funded wholly or in part by the United States Environmental Protection Agency contract (number) to (Name of Contractor), it has not been subject to the Agency's review and therefore does not necessarily reflect the views of the Agency, and no official endorsement should be inferred.''

(3) Following publication of the journal article, the Contractor shall submit five copies of the journal article to the Project Officer, and one copy to the Contracting Officer.

(d) If the Government has completed the review process and agreed that the contract material may be attributed to EPA, the Contractor shall include the following statement in the document:

This material has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name). It has been subject to the Agency's review, and it has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

(e) If the Government has completed the review process, but decides not to publish the material, the Contractor may independently publish and distribute the material for its own use and its own expense, and shall include the following statement in any independent publication:

Although the information described in this article has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name), it does not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(End of clause)

1552.237–71 Technical direction.

As prescribed in 1537.110, insert the following contract clause in cost-reimbursement contracts.

TECHNICAL DIRECTION (APR 1984)

(a) The Project Officer will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the Contractor which assists him in accomplishing the Statement of Work.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work. The Project Officer does not have the authority to issue technical direction which (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the ''Changes'' clause; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the Project Officer or confirmed by him in writing within five (5) calendar days after verbal issuance.

(End of clause)

1552.237–72 Key personnel.

As prescribed in 1537.110, insert the following contract clause when it is necessary for contract performance to identify Contractor key personnel.

KEY PERSONNEL (APR 1984)

(a) The Contractor shall assign to this contract the following key personnel:

_____

_____

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) of this clause. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This clause will be modified to reflect any approved changes of key personnel.

(End of clause)

1552.237–73 Consultant services and consent.

As prescribed in 1537.110, insert the following contract clause in contracts where the services of consultants are required. Enter ''none'' in paragraph (b) if consent is not given for one or more consultants at the time of award.

CONSULTANT SERVICES AND CONSENT (APR 1984)

(a) The Contractor shall obtain the consent of the Contracting Officer prior to using any consultant on this contract. The Contractor shall determine whether any consultant that is used has in effect an agreement with another Federal agency for similar or like services and, if so, shall notify the Contracting Officer.

(b) The Contractor may use the following consultants for the period of time at the rate shown.

Name	Number of (days) (hours)	Not to exceed the (daily) (hourly) rate of
.....	.....	$.....
.....	.....	$.....

(End of clause)

1552.237–74 Publicity.

As prescribed in 1537.110, insert the following contract clause in contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (''Super Fund'') program. The term ''on-scene coordinator'' may be substituted with ''Project Officer.''

PUBLICITY (APR 1984)

(a) The Contractor agrees to notify and obtain the verbal approval of the on-scene coordinator (or Project Officer) prior to releasing any information to the news media regarding the removal or remedial activities being conducted under this contract.

(b) It is also agreed that the Contractor shall acknowledge EPA support whenever the work funded in whole or in part by this contract is publicized in any news media.

(End of clause)

1552.237–75 Paperwork Reduction Act.

As prescribed in 1537.110, insert this contract clause in any contract requiring the collection of identical information from ten (10) or more public respondents.

PAPERWORK REDUCTION ACT (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten (10) or more public respondents, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

1552.239–103 Acquisition of Energy Star Compliant Microcomputers, Including Personal Computers, Monitors and Printers.

As prescribed in 1523.7003, insert the following clause:

ACQUISITION OF ENERGY STAR COMPLIANT MICROCOMPUTERS, INCLUDING PERSONAL COMPUTERS, MONITORS, AND PRINTERS

(APRIL 1996)

(a) The Contractor shall provide computer products that meet EPA Energy Star requirements for energy efficiency. By acceptance of this contract, the Contractor certifies that all microcomputers, including personal computers, monitors, and printers to be provided under this contract meet EPA Energy Star requirements for energy efficiency.

(b) The Contractor shall ship all products with the standby feature activated or enabled.

(c) The Contractor shall provide models that have equivalent functionality to similar non-power managed models. This functionality should include as a minimum:

(1) The ability to run commercial off-the-shelf software both before and after recovery from a low power state, including retention of files opened (with no loss of data) before the power management feature was activated.

(2) If equipment will be used on a local area network (LAN), the contractor shall provide equipment that is fully compatible with network environments, e.g., personal computers resting in a low-power state should not be disconnected from the network.

(d) The contractor shall provide monitors that are capable of being powered down when connected to the accompanying personal computer.

(End of clause)

[61 FR 14507, Apr. 2, 1996]

1552.242–70 Indirect costs.

As prescribed in 1542.705–70, insert the following clause in all cost-reimbursement type contracts. If ceilings are not being established, enter ''not applicable'' in (c).

INDIRECT COSTS (APR 1984)

(a) In accordance with paragraph (d) of the ''Allowable Cost and Payment'' clause, the final indirect cost rates applicable to this contract shall be established between the Contractor and the appropriate Government representative (EPA, other Government agency, or auditor), as provided by FAR 42.703(a). EPA's procedures require a Contracting Officer determination of indirect cost rates for its contracts. In those cases where EPA is the cognizant agency (see FAR 42.705–1), the final rate proposal shall be submitted to the cognizant audit activity and to the following designated Contracting Officer: Environmental Protection Agency, Chief, Cost Policy and Rate Negotiation Branch (3804F), Cost Advisory and Financial Analysis Division, Washington, DC 20460.

Where EPA is not the cognizant agency, the final rate proposal shall be submitted to the above-cited address, to the cognizant audit agency, and to the designated Contracting Officer of the cognizant agency. Upon establishment of the final indirect cost rates, the Contractor shall submit an executed Certificate of Current Cost or Pricing Data (see FAR 15.804–4) applicable to the data furnished in connection with the final rates to the cognizant audit agency. The final rates shall be contained in a written understanding between the Contractor and the appropriate Government representative. Pursuant to the ''Allowable Cost and Payment'' clause, the allowable indirect costs under this contract shall be obtained by applying the final agreed upon rate(s) to the appropriate bases.

(b) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the appropriate Government representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

Cost center	Period	Rate	Base
.....	.....	.....	.....
.....	.....	.....	.....

These billing rates may be prospectively or retroactively revised by mutual agreement, at the request of either the Government or the Contractor, to prevent substantial overpayment or underpayment.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this clause, ceilings are hereby established on indirect costs reimbursable under this contract. The Government shall not be obligated to pay the Contractor any additional amount on account of indirect costs in excess of the ceiling rates listed below:

Cost center	Period	Rate	Base
.....	.....	.....	.....
.....	.....	.....	.....

(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994]

1552.245–70 Decontamination of government property.

As prescribed in 1545.106(a) and 1545.303–71, insert the following contract clause when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the cleanup of hazardous or toxic substances in the environment.

DECONTAMINATION OF GOVERNMENT PROPERTY (APR 1984)

In addition to the requirements of the ''Government Property'' clause, the Contractor shall certify in writing that any Government-furnished property or Contractor-acquired property is returned to the Government free from contamination by any hazardous or toxic substances.

(End of clause)

1552.245–71 Government-furnished data.

As prescribed in 1545.106(b), insert the following contract clause in any contract that the Government is to furnish the Contractor data. Identify in the clause the data to be provided.

GOVERNMENT-FURNISHED DATA (APR 1984)

(a) The Government shall deliver to the Contractor the Government-furnished data described in the contract. If the data, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the ''Changes'' clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished data shall remain in the Government.

(c) The Contractor shall use the Government-furnished data only in connection with this contract.

(d) The following data will be furnished to the Contractor on or about the time indicated:

_____

_____

_____

(End of clause)

1552.245–72 Fabrication or acquisition of nonexpendable property.

As prescribed in 1545.106(c), insert the following contract clause in all cost-reimbursement type contracts or contracts with cost-reimbursement portions.

FABRICATION OR ACQUISITION OF NONEXPENDABLE PROPERTY (APR 1984)

The Contractor shall not fabricate nor acquire under this contract, either directly or indirectly through a subcontract, any item of nonexpendable property without written approval from the Contracting Officer.

(End of clause)

1552.246–70 Quality Assurance (QA) Program plan.

As prescribed in 1546.201(b), insert the following solicitation provision in Requests for Proposals if a program plan is required. A QA program plan is a general statement of an offeror's capability for QA.

QUALITY ASSURANCE (QA) PROGRAM PLAN (APR 1984)

Each offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) program plan setting forth the offeror's capability for quality assurance. The plan shall address the following:

(a) A statement of policy concerning the organization's commitment to implement a Quality Control/Quality Assurance program to assure generation of measurement data of adequate quality to meet the requirements of the Statement of Work.

(b) An organizational chart showing the position of a QA function or person within the organization. It is highly desirable that the QA function or person be independent of the functional groups which generate measurement data.

(c) A delineation of the authority and responsibilities of the QA function or person and the related data quality responsibilities of other functional groups of the organization.

(d) The type and degree of experience in developing and applying Quality Control/Quality Assurance procedures to the proposed sampling and measurement methods needed for performance of the Statement of Work.

(e) The background and experience of the proposed personnel relevant to accomplish the QA specifications in the Statement of Work.

(f) The offeror's general approach for accomplishing the QA specifications in the Statement of Work.

(End of provision)

1552.246–71 Quality Assurance (QA) Project Plan.

As prescribed in 1546.201(c)(1), insert the following solicitation provision in Requests for Proposals when a QA project plan is required as part of the proposal submission. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work. When offerors are required to submit a project plan, a program plan may or may not be required. The project plan may be a part of an offeror's technical proposal, or a deliverable under the contract.

QUALITY ASSURANCE (QA) PROJECT PLAN (APR 1984)

The offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) project plan which shall describe specific procedures and responsibilities needed to accomplish the QA specifications in the Statement of Work. The project plan shall consist of the following form and content:

(a) Title page, with provision for approval signatures.

(b) Table of contents.

(c) Project description.

(d) Project organization(s) and responsibilities.

(e) Quality Assurance objectives for measurement data, in terms of precision, accuracy, completeness, representativeness and comparability.

(f) Sampling procedures.

(g) Sample custody.

(h) Calibration procedures, references, and frequency.

(i) Analytical procedures.

(j) Data reduction, validation, and reporting.

(k) Internal quality control checks and frequency.

(l) Quality assurance performance audits, system audits, and frequency.

(m) Quality Assurance reports to management.

(n) Preventive maintenance procedures and schedules.

(o) Specific procedures to be used in routinely assessing data precision and accuracy, representativeness, comparability, and completeness of the specific measurement parameters involved.

(p) Correction action.

(End of provision)

[49 FR 8867, Mar. 8, 1984; 49 FR 24735, June 15, 1984]

1552.246–72 Quality Assurance (QA) Project Plan documentation.

As prescribed in 1546.201(c)(2), insert the following clause in negotiated contracts when QA Project Plan Documentation is needed. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work. When offerors are required to submit a project plan, a program plan may or may not be required. When a QA project plan was not a required part of the technical proposal, the project plan may be required as a deliverable under the contract by use of the following. However, the Statement of Work must contain a specification for the form and content of the project plan before this paragraph may be used.

QUALITY ASSURANCE (QA) PROJECT PLAN DOCUMENTATION (APR 1984)

(a) The Contractor shall submit to the Project Officer ____ copies of a Draft Project Plan for Quality Assurance within ____ days after the effective date of the contract.

(b) The Government will review and return the Draft Project Plan indicating approval or disapproval, and comments, if necessary, within _____ calendar days. In the event the government delays review and return of the Draft Project Plan beyond the period specified, the Contractor shall immediately notify the Contracting Officer in writing. The Contractor shall deliver the Final Project Plan within _____ days after the effective date of the contract.

(c) The Contracting Officer will incorporate the approved Quality Assurance Project Plan into the contract.

(End of clause)

PART 1553—FORMS

Sec.

1553.000 Scope of part.

Subpart 1553.2—Prescription of Forms

1553.209 Contractor qualifications.
1553.209–70 EPA Form 1900–26, Contracting Officer's Evaluation of Contractor Performance.
1553.209–71 EPA Form 1900–27, Project Officer's Evaluation of Contractor Performance.
1553.213 Small purchases and other simplified purchase procedures.
1553.213–70 EPA Form 1900–8, Procurement Request/Order.
1553.216 Types of contracts.
1553.216–70 EPA Form 1900–41A, CPAF Contract Summary of Significant Performance Observation.
1553.216–71 EPA Form 1900–41B, CPAF Contract Individual Performance Event.
1553.232 Contract financing.
1553.232–70 EPA Form 1900–3, Assignee's Release.
1553.232–71 EPA Form 1900–4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.
1553.232–72 EPA Form 1900–5, Contractor's Assignment of Refunds, Rebates, and Credits.
1553.232–73 EPA Form 1900–6, Contractor's Release.
1553.232–74 EPA Form 1900–10, Contractor's Cumulative Claim and Reconciliation.
1553.232–75 EPA Form 1900–68, notice of contract costs suspended and/or disallowed.
1553.232–76 [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8886, Mar. 8, 1984, unless otherwise noted.

EDITORIAL NOTE: Forms referenced in part 1553 do not appear in the Code of Federal Regulations.

1553.000 Scope of part.

This part prescribes Agency forms for use in acquisitions and contains requirements and information generally applicable to the forms.

Subpart 1553.2—Prescription of Forms

1553.209 Contractor qualifications.

1553.209–70 EPA Form 1900–26, Contracting Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170–4(a), EPA Form 1900–26 shall be used by the Contracting Officer to record his/her evaluation of Contractor performance.

1553.209–71 EPA Form 1900–27, Project Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170–4(a), EPA Form 1900–27 shall be used by the Project Officer to record his/her evaluation of Contractor performance.

1553.213 Small purchases and other simplified purchase procedures.

1553.213–70 EPA Form 1900–8, Procurement Request/Order.

As prescribed in 1513.505–2, EPA Form 1900–8 may be used in lieu of Optional Forms 347 and 348 for individual purchases.

1553.216 Types of contracts.

1553.216–70 EPA Form 1900–41A, CPAF Contract Summary of Significant Performance Observation.

As prescribed in 1516.404–278, EPA Form 1900–41A shall be used to document significant performance observations under CPAF contracts.

1553.216–71 EPA Form 1900–41B, CPAF Contract Individual Performance Event.

As prescribed in 1516.404–278, EPA Form 1900–41B shall be used to document individual performance events under CPAF contracts.

1553.232 Contract financing.

1553.232–70 EPA Form 1900–3, Assignee's Release.

As prescribed in 1532.805–70(a), the EPA Form 1900–3 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

1553.232–71 EPA Form 1900–4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.

As prescribed in 1532.805–70(b), the EPA Form 1900–4 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

1553.232–72 EPA Form 1900–5, Contractor's Assignment of Refunds, Rebates, and Credits.

As prescribed in 1532.805–70(c), the EPA Form 1900–5 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's release.

1553.232–73 EPA Form 1900–6, Contractor's Release.

As prescribed in 1532.805–70(d), the EPA Form 1900–6 must be submitted by the Contractor under cost-reimbursement contracts prior to final payment thereunder.

1553.232–74 EPA Form 1900–10, Contractor's Cumulative Claim and Reconciliation.

As prescribed in 1532.170(a), the EPA Form 1900–10 shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from the inception of the contract to completion. It shall be submitted by the Contractor along with the completion voucher.

1553.232–75 EPA Form 1900–68, notice of contract costs suspended and/or disallowed.

As prescribed in 1532.170(b), the Contracting Officer shall insert EPA Form 1900–68 in all cost-reimbursement type and fixed-rate type contracts.

[61 FR 29318, June 10, 1996]

1553.232–76 [Reserved]

APPENDIX I TO CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY; CLASS JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION IN ACQUISITIONS FROM THE FEDERAL PRISON INDUSTRIES AND THE GOVERNMENT PRINTING OFFICE

1. The Environmental Protection Agency (EPA) anticipates the acquisition of supplies from the Federal Prison Industries (UNICOR) and the acquisition of Government printing and related supplies from the Government Printing Office (GPO) to meet the needs of the Agency.

2. The Agency is authorized to make these acquisitions from the UNICOR and GPO without full and open competition under the authority in 41 U.S.C. 253(c)(5) as sources required by statute, i.e., 18 U.S.C. 4124 and 44 U.S.C. 501–504, 1121.

3. The anticipated cost of these acquisitions to the Agency will be fair and reasonable.

4. This class justification applies to any proposed acquisition made by the EPA from the UNICOR or GPO.

5. This class justification will remain in effect until April 1, 1988.

6. The undersigned certifies that this class justification is accurate and complete to the best of his knowledge and belief.

[50 FR 14361, Apr. 11, 1985]

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

(Parts 1600 to 1699)

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SUBCHAPTER A—GENERAL

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1601.1—Purpose, Authority, Issuance

Sec.
1601.101 Purpose.
1601.102 Authority.
1601.103 Applicability.
1601.104 Issuance.
1601.104–1 Publication and code arrangement.
1601.104–2 Arrangement of regulation.
1601.105 OMB approval under the Paperwork Reduction Act.

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16037, May 1, 1987, unless otherwise noted.

Subpart 1601.1—Purpose, Authority, Issuance

1601.101 Purpose.

(a) This subpart establishes chapter 16, Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation, within title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be FEHBAR.

(b) The purpose of the FEHBAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering contracts with health insurance carriers in the Federal Employees Health Benefits Program (FEHBP).

1601.102 Authority.

(a) The FEHBAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. chapter 89 and other applicable law and regulation.

(b) The FEHBAR does not replace or incorporate regulations found at 5 CFR part 890, which provides the substantive policy guidance for administration of the FEHBP under 5 U.S.C. Chapter 89. The following is the order of precedence in interpreting a contract provision under the FEHBP:

(1) 5 U.S.C. Chapter 89;

(2) 5 CFR part 890;

(3) 48 CFR Chapters 1 and 16;

(4) The FEHBP contract.

[52 FR 16037, May 1, 1987, as amended at 59 FR 14764, Mar. 30, 1994]

1601.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEHBP pursuant to 5 U.S.C. chapter 89. The FEHBAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEHBP.

1601.104 Issuance.

1601.104–1 Publication and code arrangement.

(a) The FEHBAR and its subsequent changes are published in

(1) Daily issues of the FEDERAL REGISTER; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The FEHBAR is issued as chapter 16 of title 48 of the Code of Federal Regulations.

1601.104–2 Arrangement of regulation.

(a) *General.* The FEHBAR conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding FEHBAR part, subpart, etc. The FEHBAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;

(2) FEHBAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of chapter 16 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 16 may be identified as ''FEHBAR'' followed by the section number.

1601.105 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

Provision	Control No.
FEHBAR 1604.705	3206–0145
FAR 9.1	3206–0145

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBAR *within* OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBAR must—

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Sec.
1602.000–70 Scope of part.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.
1602.170–1 Carrier.
1602.170–2 Community rate.
1602.170–3 Comprehensive medical plan.
1602.170–4 Contractor.
1602.170–5 Cost or pricing data.
1602.170–6 Director.
1602.170–7 Experience rate.
1602.170–8 FEHBP.
1602.170–9 Health benefits plan.
1602.170–10 Letter of credit.
1602.170–11 Negotiated benefits contracts.
1602.170–12 OPM.
1602.170–13 Similarly sized subscriber groups.
1602.170–14 Subcontractor.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16038, May 1, 1987, unless otherwise noted.

1602.000–70 Scope of part.

This part defines words and terms commonly used in this regulation.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

1602.170–1 Carrier.

Carrier means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, delivering, paying for, or reimbursing the cost of health care services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, including a health maintenance organization, a nonprofit hospital and health

service corporation, or any other entity providing a plan of health insurance, health benefits or health services, in consideration of premiums or other periodic charges payable to the carrier.

[62 FR 47573, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47573, Sept. 10, 1997, section 1602.170–1 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1602.170–1 Carrier.

Carrier, as defined in 5 U.S.C. 8901(7), means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization.

1602.170–2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan carrier. References in this subchapter to ''a combination of cost and price analysis'' relating to the applicability of policy and contract clauses refer to comprehensive medical plan carriers using community rates.

(b) *Adjusted community rate* means a community rate which has been adjusted for expected use of medical resources of the FEHBP group. An adjusted community rate is a prospective rate and cannot be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group.

[55 FR 27414, July 2, 1990, as amended at 62 FR 47573, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47573, Sept. 10, 1997, section 1602.170–2(a) was revised, effective Oct. 10, 1997. For the convenience of the user the superseded text is set forth as follows:

1602.170–2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan. This capitation rate or its equivalent is a market price consistent with FAR 15.804–3. References in this subchapter to ''price analysis'' or ''established market price'' relating to the applicability of policy and contract clauses refer to comprehensive medical plans using community rates.

* * * * *

1602.170–3 Comprehensive medical plan.

Comprehensive Medical Plan means a plan as defined under 5 U.S.C. 8903(4).

1602.170–4 Contractor.

Contractor means carrier.

1602.170–5 Cost or pricing data.

(a) *Experience rated carriers.* Cost or pricing data for experience rated carriers includes information such as claims data; actual or negotiated benefits payments made to providers of medical services for the provision of health care such as capitation not adjusted for specific groups, per diems, and Diagnostic Related Group (DRG) payments; cost data; utilization data; and administrative expenses and retentions.

(b) *Community rated carriers.* Cost or pricing data for community rated carriers is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs). Such data include, but are not limited to, capitation rates; prescription drug, hospital, and office visit benefits utilization data; trend data; actuarial data; rating methodologies for other groups; standardized presentation of the carrier's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; ''step-up'' factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation.

[62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–5 was redesignated as section 1602.170–6, and a new 1602.1705 was added, effective Oct. 10, 1997.

1602.170–6 Director.

Director means the Director of the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–5 was redesignated as section 1602.170–6, effective Oct. 10, 1997.

1602.170–7 Experience rate.

Experience rate means a rate for a given group that is the result of that group's actual paid claims, administrative expenses, retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of medical services for the provision of health care such as capitation not adjusted for specific groups, per diems, and Diagnostic Related Group (DRG) payments.

[54 FR 27414, July 2, 1990. Redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–6 was redesignated as section 1602.170–7, effective Oct. 10, 1997.

1602.170–8 FEHBP.

FEHBP means the Federal Employees Health Benefits Program.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–7 was redesignated as section 1602.170–8, effective Oct. 10, 1997.

1602.170–9 Health benefits plan.

Health benefits plan means a group insurance policy, contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, arranging for, delivering, paying for, or reimbursing any of the costs of health care services.

[62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–8 was redesignated as section 1602.170–9, and revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1602.170–8 Health benefits plan.

Health benefits plan, as defined in 5 U.S.C. 8901(6), means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services.

1602.170–10 Letter of credit.

Letter of credit means the method by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms ''carrier reserves,'' and ''special reserves'' include any balance in the carrier's letter of credit account.

[53 FR 51783, Dec. 23, 1988, as amended at 57 FR 14359, Apr. 20, 1992. Redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–9 was redesignated as section 1602.170–10, effective Oct. 10, 1997.

1602.170–11 Negotiated benefits contracts.

Negotiated benefits contracts are FEHBP contracts in which benefits provided and subscription income are based on either community rating or experience rating.

[62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–11 was added, effective Oct. 10, 1997.

1602.170–12 OPM.

OPM means the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988 and further redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–10 was redesignated as section 1602.170–12, effective Oct. 10, 1997.

1602.170–13 Similarly sized subscriber groups.

(a) *Similarly sized subscriber groups* (SSSGs) are a comprehensive medical plan carrier's two employer groups that:

(1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(2) Use any rating method other than retrospective experience rating; and,

(3) Meet the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an FEHB carrier enters into an agreement to provide health care services is a potential SSSG (including separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products).

(c) Exceptions to the general rule stated in paragraph (b) of this section are (and the following groups must be excluded from SSSG consideration):

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare groups, and groups that have only a stand alone benefit (such as dental only);

(4) A purchasing alliance whose rate-setting is mandated by the State or local government.

(d) OPM shall determine the FEHBP rate by selecting the lower of the two rates derived by using rating methods consistent with those used to derive the SSSG rates.

[62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–11 was redesignated as section 1602.170–13 and revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 1602.170–11 Similarly sized subscriber groups.

Similarly sized subscriber groups (SSSGs) are a comprehensive medical plan's two employer groups that:

(a) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(b) Use any rating method other than retrospective experience rating; and,

(c) Meet the criteria specified in the rate instructions issued by OPM.

[59 FR 14764, Mar. 30, 1994]

1602.170–14 Subcontractor.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988, and further redesignated at 55 FR 27414, July 2, 1990 and 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1602.170–12 was redesignated as section 1602.170–14, effective Oct. 10, 1997.

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

Sec.
1603.7001 Policy.
1603.7002 Additional guidelines.
1603.7003 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

1603.7001 Policy.

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to continue participation in the FEHB Program.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1603.701 was redesignated as section 1603.7001, effective Oct. 10, 1997.

1603.7002 Additional guidelines.

Any advertisements which identify a carrier's participation in the FEHBP shall—

(a) Be limited to the merits of the carrier's FEHBP plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHBP plans is the comparison chart issued by OPM.

(b) Not use the FEHBP logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as:

To sign up, fill out a Health Benefits Registration Form (Standard Form 2809) from your personnel office indicating the enrollment you want:

The enrollment codes for (plan's name) are:

Self Only _____ Enrollment Code_____

Self and Family _____ Enrollment Code _____

The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms, contact the Office of Personnel Management at P.O. Box 809, Washington, DC 20044.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1603.702 was redesignated as section 1603.7002, effective Oct. 10, 1997.

1603.7003 Contract clause.

The clause at 1652.203–70 shall be inserted in all FEHBP contracts.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1603.703 was redesignated as section 1603.7003, effective Oct. 10, 1997.

PART 1604—ADMINISTRATIVE MATTERS

Subpart 1604.7—Contractor Records Retention

Sec.
1604.703 Policy.
1604.705 Specific retention periods.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

Subpart 1604.71—Disputed Health Benefit Claims

1604.7101 Filing health benefit claims/court review of disputed claims.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1604.7—Contractor Records Retention

1604.703 Policy.

In view of the unique payment schedules of FEHBP contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

1604.705 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215–2 ''Audit & Records—Negotiation,'' the contracting officer shall insert the clause at 1652.204–70 in all FEHBP contracts.

[52 FR 16039, May 1, 1987, as amended at 62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1604.705 was amended by removing the words 'Audit—Negotiation', and adding in their place the words 'Audit & Records—Negotiation', effective Oct. 10, 1997.

Subpart 1604.70—Coordination of Benefits

1604.7001 Coordination of benefits clause.

OPM expects all FEHBP plans to coordinate benefits. Accordingly, the clause set forth at 1652.204–71 shall be inserted in all FEHBP contracts.

Subpart 1604.71—Disputed Health Benefit Claims

§1604.7101 Filing health benefit claims/court review of disputed claims.

Guidelines for a Federal Employees Health Benefit (FEHB) Program covered individual to file a claim for payment or service and for legal actions on disputed health benefit claims are found at 5 CFR 890.105 and 890.107, respectively. The contract clause at 1652.204–72 of this chapter, reflecting this guidance, must be inserted in all FEHB Program contracts.

[61 FR 15198, Apr. 5, 1996]

SUBCHAPTER B—ACQUISITION PLANNING

PART 1605—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1605.000 Applicability.

FAR part 5 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[52 FR 16039, May 1, 1987]

PART 1606—COMPETITION REQUIREMENTS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1606.001 Applicability.

FAR part 6 has no practical application to FEHBP contracts in view of the statutory exception provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

PART 1609—CONTRACTOR QUALIFICATIONS

Subpart 1609.4—Debarment, Suspension, and Ineligibility

1609.470 Notification of Debarment, Suspension, and Ineligibility.
1609.471 Contractor certification.

Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1609.7001 Minimum standards for health benefits carriers.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1609.4—Debarment, Suspension, and Ineligibility

SOURCE: 59 FR 14764, Mar. 30, 1994, unless otherwise noted.

1609.470 Notification of Debarment, Suspension, and Ineligibility.

(FAR) 48 CFR, part 9, subpart 9.4 is supplemented as set out in the certification required in 1609.471 by converting the FAR ''offeror's'' certification at (FAR) 48 CFR 52.209–5 into a carrier's certification. This change reflects the FEHBP's statutory exemption from competitive bidding (5 U.S.C. 8902), which obviates the issuance of solicitations.

1609.471 Contractor certification.

All FEHBP carriers and applicant carriers are required to submit the following certification. Applicant carriers must submit the certification prior to OPM's determination on the application for approval to participate in the FEHBP. Current carriers must submit the certification once, along with their benefit and rate proposals for the 1995 contract year.

DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

The Carrier certifies, to the best of its knowledge and belief, that—

(a) The Carrier and/or any of its Principals—

(1) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(3) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(4) The Carrier has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(b) *Principals,* for the purposes of this certification, means officers; directors; owners;

partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Carrier subject to prosecution under section 1001, title 18, United States Code.

(c) The Carrier shall provide immediate written notice to the Contracting Officer if, at any time, the Carrier learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(d) A Carrier's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Carrier's failure to provide such additional information as requested by the Contracting Officer, will be considered in connection with a determination of the Carrier's responsibility under subpart 1609.70, Minimum Standards for Health Benefits Carriers.

(e) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Carrier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(f) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer. If it is later determined that the Carrier knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

Carrier Name: _____

_____

Name of Chief Executive Officer

Date signed: _____

(End of Certificate)

Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1609.7001 Minimum standards for health benefits carriers.

(a) The carrier of an approved health benefits plan shall meet the requirements of chapter 89 of title 5, United States Code; part 890 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the following standards. The carrier shall continue to meet the requirements of chapter 89 of title 5, United States Code, and the standards cited in this paragraph while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the contract in accordance with 5 CFR 890.204.

(1) It must be lawfully engaged in the business of supplying health benefits.

(2) It must have, in the judgement of OPM, the financial resources and experience in the field of health benefits to carry out its obligations under the plan.

(3) It must keep such reasonable financial and statistical records, and furnish such reasonable financial and statistical reports with respect to the plan, as may be requested by OPM.

(4) It must permit representatives of OPM and of the General Accounting Office to audit and examine its records and accounts which pertain, directly or indirectly, to the plan at such reasonable times and places as may be designated by OPM or the General Accounting Office.

(5) It must accept, subject to adjustment for error or fraud, in payment of its charges for health benefits for all enrollees in its plan, the enrollment charges received by the Employees Health Benefits (EHB) Fund less amounts set aside for the administrative and contingency reserves prescribed in 5 CFR 890.503. OPM makes available or pays the amounts within 30 days of receipt by the EHB Fund.

(6) A carrier that is an employee organization must continue coverage, without requirement of membership, of any eligible survivor annuitants, former spouses continuing coverage with the carrier under 5 CFR 890.803, children temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(2), or former spouses temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(3).

(7) It must timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 1642.12 of this chapter.

(b) In addition to the standards in paragraph (a) of this section, the carrier must perform the contract in accordance with prudent business practices. A carrier's sustained poor business practice in the management or administration of a health benefits plan is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the carrier's contract. Prudent business practices include, but are not limited to, the following:

(1) Timely compliance with OPM instructions and directives.

(2) Legal and ethical business and health care practices.

(3) Compliance with the terms of the FEHB contract, regulations and statutes.

(4) Timely and accurate adjudication of claims or rendering of medical services.

(5) A system for accounting for costs incurred under the contract, when required, which includes segregating and pricing FEHB medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner.

(6) Accurate accounting reports of actual, allowable, allocable, and reasonable costs incurred in the administration of the contract.

(7) Application of performance standards for assuring contract quality as required by 1646.270(d).

(8) Establishment and maintenance of a system of internal control that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses are in compliance with legal, regulatory, and contractual guidelines;

(ii) FEHB funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and,

(iii) Data are accurately and fairly disclosed in all reports required by OPM.

(c) The following types of activities are examples of poor business practices which adversely affect the health benefits carrier's responsibility under its contract. A pattern of poor conduct or evidence of misconduct in these areas is cause for OPM to withdraw approval of the carrier:

(1) Presenting false claims by charging expenses to the contract which according to the contract terms are not chargeable to the contract;

(2) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;

(3) Repeatedly and knowingly providing false or misleading information in the rate setting process;

(4) Repeated failure to comply with OPM instructions and directives;

(5) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract; and

(6) Failure to assure that the plan provides properly paid or denied claims, or providing medical services which are inconsistent with standards of good medical practice.

(d) The Director or his or her designee will determine whether to propose withdrawal of approval and hold a hearing based on the seriousness of the carrier's actions and its proposed method to effect corrective action.

[57 FR 14359, Apr. 20, 1992. Redesignated and amended at 59 FR 14764, 14765, Mar. 30, 1994]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1614—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1614.000 Applicability.

FAR part 14 has no practical application to FEHBP contracts in view of the statutory exemption provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

PART 1615—CONTRACTING BY NEGOTIATION

Subpart 1615.1—General Requirements for Negotiation

Sec.

1615.170 Negotiation authority.

Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

Subpart 1615.6—Source Selection

1615.602 Applicability.

Subpart 1615.8—Price Negotiation

1615.802 Policy.
1615.804–70 Certificate of cost or pricing data for community rated carriers.
1615.804–71 Supplemental representation for SF 1412.
1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.
1615.805–70 Carrier investment of FEHB funds.
1615.805–71 Investment income clause.

Subpart 1615.9—Profit

1615.902 Policy.
1615.905 Profit analysis factors.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16040, May 1, 1987, unless otherwise noted.

Subpart 1615.1—General Requirements for Negotiation

1615.170 Negotiation authority.

The authority to negotiate FEHBP contracts is conferred by 5 U.S.C. 8902.

Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

FAR subpart 15.4 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

Subpart 1615.6—Source Selection

1615.602 Applicability.

FAR subpart 15.6 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than on the basis of competition *between* prospective carriers.

Subpart 1615.8—Price Negotiation

1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a) For both experience rated and community rated contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis shall be used for contracts where premiums and subscription income are based on community rates. For contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data. The carrier must submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHBP premiums for the contract term will be $500,000 or more, OPM shall require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.804–70. In addition, OPM shall require the carrier to complete the proposed rates form containing cost and pricing data, and the Community Rate Questionnaire, but shall not require the carrier to send these documents to OPM. The carrier shall keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204–70. OPM shall perform a basic reasonableness test on the data submitted. Rates that do not pass this test shall be subject to further OPM review.

(3) For contracts with 1,500 or more enrollee contracts for which the FEHBP premiums for the contract term will be at least $500,000, OPM shall require the carrier to provide the data and methodology used to determine the FEHBP rates. OPM shall also require the data and methodology used to determine the rates for the carrier's similarly sized subscriber groups. The carrier shall provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM shall evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(4) Contracts shall be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments shall be based on the lower of the two rates determined by using the methodology (including discounts) the Carrier used for the two SSSGs.

(5) FEHBP community rated carriers shall comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

[62 FR 47574, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1615.802 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth below.

1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a)(1) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(2) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based on cost analysis.

(b)(1) Price analysis for contracts where premiums and subscription income are based on community rates (market prices). For contracts with fewer than 1,500 FEHBP subscribers, OPM may rely on a basic reasonableness test in combination with a carrier's representation that the market price submitted on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, is based on the price offered to its similarly sized subscriber groups (see FEHBAR 1602.170–11).

(2) For contracts with 1,500 FEHBP subscribers or more and for contracts with fewer than 1,500 FEHBP subscribers that do not use the SF 1412, OPM shall require that the plan provide the data and methodology used to determine the FEHBP rates. OPM shall also

require the data and methodology used to determine the rates for the plan's similarly sized subscriber groups.

(3) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments will be based on the lowest rates determined for the Federal group using the methodology (including discounts) for the two SSSGs.

(4) FEHBP community rated carriers shall comply with SSSG criteria provided annually by OPM in the rate instructions for the applicable contract period.

[52 FR 16040, May 1, 1987, as amended at 55 FR 27414, July 2, 1990; 59 FR 14765, Mar. 30, 1994]

1615.804–70 Certificate of cost or pricing data for community rated carriers.

The contracting officer shall require a carrier with a contract meeting the requirements in 1615.802(c)(2) or 1615.802(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in 1615.802(c)(2) shall complete the Certificate and keep it on file at the carrier's place of business in accordance with 1652.204–70. A carrier with a contract meeting the requirements in 1615.802(c)(3) shall submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

CERTIFICATE OF ACCURATE COST OR PRICING DATA FOR COMMUNITY RATED CARRIERS

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee, in support of the _____* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHBP rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

Firm: _____
Name: _____
Signature: _____
Date of Execution: _____

*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

(End of Certificate)

[62 FR 47575, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, section 615.804–70 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth below.

1615.804–70 Certificate of accurate pricing for community rated plans.

The contracting officer shall require a carrier that rates using a community rate as defined by FEHBAR 1602.170–2 to execute the Certificate of Accurate Pricing for Community Rated Plans contained in this section unless the carrier has been exempted from filing certified cost or pricing data pursuant to 1615.802(b)(1). The carrier shall submit the Certificate to OPM at the time it submits its rate reconciliation.

CERTIFICATE OF ACCURATE PRICING FOR COMMUNITY RATED PLANS

This is to certify that, to the best of my knowledge and belief: (1) the cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee in support of the _____* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract, and are accurate, complete, and current as of the date this certificate is executed; and (2) The FEHBP rates were developed in a manner consistent with the methodology used to rate the plan's similarly sized subscriber groups and approved by OPM.

Firm: _____
Name: _____
Title: _____
Signature: _____
Date of Execution: _____

(End of Certificate)

[59 FR 14765, Mar. 30, 1994]

1615.804–71 Supplemental representation for SF 1412.

Carriers with less than 1,500 FEHBP subscribers may request an exemption from submission of certified cost and pricing data. The request for exemption is made on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data (see FAR 53.301–1412), which contains a representation

*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

that all the statements made on or attached to the SF 1412 are correct. In addition to the representation made on the SF 1412, the Contracting Officer shall require the carrier to execute the Supplemental Representation for SF 1412 shown below. The carrier shall attach the supplemental representation to the SF 1412.

SUPPLEMENTAL REPRESENTATION FOR SF 1412

The Carrier represents that the market price used to determine the _____* FEHBP rates is no greater than the market price quoted to the Carrier's similarly sized subscriber groups (see FEHBAR 1602.170–11); that adjustments made to the market price were consistent with the rating methodology used to rate the Carrier's similarly sized subscriber groups; and that the adjustments were developed in accordance with the requirements of 48 CFR chapter 16 and the FEHBP contract.

Firm _____

Name _____

Title _____

Signature _____

Date of execution _____

*Identify the time period to which the rates apply. The rate must be either the actual rate in effect for the current contract term or a quoted rate for the next contract term.

[55 FR 27414, July 2, 1990]

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, section 1615.804–71 was removed and reserved, effective Oct. 10, 1997.

1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in section 1652.215–70 shall be inserted in FEHBP contracts for $500,000 or more that are based on a combination of cost and price analysis (community rated).

[62 FR 47575, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, section 1615.804–72 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth below.

1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in 1652.215–70 shall be inserted in all FEHBP contracts based on established market price.

[55 FR 27415, July 2, 1990]

1615.805–70 Carrier investment of FEHB funds.

(a) This paragraph does not apply to contracts based on a combination of cost and price analysis (community rated).

(b) The carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(c) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier fails to invest excess FEHB funds or to credit any income due the contract, for whatever reason, it shall return or credit any investment income lost to OPM or the special reserve.

(d) *Investment income.* Investment income is the net amount earned by the carrier after deducting investment expenses.

[52 FR 16040, May 1, 1987, as amended at 55 FR 27415, July 2, 1990; 62 FR 47575, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47574, Sept. 10, 1997, section 1615.805–70 (a) was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth below.

1615.805–70 Carrier investment of FEHB funds.

(a) This paragraph does not apply to contracts based on price analysis.

* * * * *

1615.805–71 Investment income clause.

The clause set forth in 1652.215–71 shall be inserted in all contracts based on cost analysis.

Subpart 1615.9—Profit

1615.902 Policy.

(a) OPM will determine the profit or fee prenegotiation objective (service charge) portion of FEHBP contracts by use of a weighted guidelines structured approach when the pricing of such contracts is determined by cost analysis. The service charge so determined shall be the *total* service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

1615.905 Profit analysis factors.

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHBP contracts. The following factors as defined in FAR 15.905–1 will be applied to

projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHBP through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHBP generally a plus weight, documented inattention or indifference to cost control a negative weight.

(2) *Contract cost risk.* OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract, in assessing the degree of cost responsibility and associated risk assumed by the contractor as a factor in negotiating profit. It should be noted that the ''loss carry forward basis'' of experience rated group insurance practices limits this factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor's share of *cost* risks only, taking into account such elements as the adequacy and reliability of data for estimating costs, etc., offset by the ''loss carry forward basis'' of experience rating.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905–1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a plus weight; poor support will receive a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEHBP contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investments costs of direct benefit to the FEHBP that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. This factor shall be used to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of demonstrated value to the FEHBP and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the program at large. Improvements and innovations recognized and rewarded under any of the other profit factors cannot be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

Profit factor	Weight ranges (percent)
1. Contractor performance	−.2 to +.45.
2. Contract cost risk*	+.02 to +.2.
3. Federal socioeconomic programs.	−.05 to +.05.
4. Capital investments	0 to +.02.
5. Cost control	0 to +.35.
6. Independent development	0 to +.03.

*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less	.06 to .10.
10,001–50,000	.05 to .09.
50,001–200,000	.04 to .07.
200,001–500,000	.03 to .06.
500,001 and over	.02 to .04.

PART 1616—TYPES OF CONTRACTS

Subpart 1616.1—Selecting Contract Types

Sec.
1616.102 Policies.
1616.105 Solicitation provision.

Subpart 1616.2—Fixed-Price Contracts

1616.270 Clause—contracts based on established market price (community rate).
1616.271 Clause—contracts based on cost analysis (experience rate).

Subpart 1616.70—Negotiated Benefits Contracts

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).
1616.7002 Clause—contracts based on cost analysis (experience rated).

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1616 appear at 55 FR 27415, July 2, 1990.

Subpart 1616.1—Selecting Contract Types

1616.102 Policies.

All FEHBP contracts shall be negotiated benefits contracts.

[62 FR 47575, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, section 1616.102 was revised, effective October 10, 1997. For the convenience of the user, the superseded text is set forth below:

1616.102 Policies.

(a) FEHBP contracts in which benefits provided and subscription income are based on community rating (i.e., established market price) shall be negotiated fixed-price contracts with economic price adjustments.

(b) FEHBP contracts in which benefits provided and subscription income are based on experience rating shall be a combination of negotiated fixed-price contracts with provisions for a form of retroactive price redetermination.

1616.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

Subpart 1616.2—Fixed-Price Contracts

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, subpart 1616.2 was removed, effective Oct. 10, 1997.

1616.270 Clause—contracts based on established market price (community rate).

The clause at 1652.216–70 shall be inserted in all FEHBP contracts based on established market price.

1616.271 Clause—contracts based on cost analysis (experience rate).

The clause at 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis.

Subpart 1616.70—Negotiated Benefits Contracts

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, subpart 1616.70 was added, effective Oct. 10, 1997.

1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).

The clause at section 1652.216–70 shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

1616.7002 Clause—contracts based on cost analysis (experience rated).

The clause at section 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1622.1—Basic Labor Policies

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1622.103–70 Contract clause.

The clause at 1652.222–70 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

PART 1624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1624.1—Protection of Individual Privacy

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1624.104 Contract clause.

Records retained by FEHBP carriers on Federal subscribers and members of their families serve the carriers' own commercial function of paying health benefits claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for carriers to keep certain records confidential. The clause at 1652.224–70 shall be inserted in all FEHBP contracts.

[52 FR 16041, May 1, 1987]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1629—TAXES

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, part 1629 was added, effective Oct. 10, 1997.

Subpart 1629.4—Contract Clauses

1629.402 Foreign contracts.

The clause set forth in section 1652.229–70 shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico.

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1631.2—Contracts With Commercial Organizations

Sec.
1631.200 Scope of subpart.
1631.201–70 FEHBP credits.
1631.203–70 FEHBP General and Administrative (G&A) expenses.
1631.205 Selected costs.
1631.205–41 Taxes.
1631.205–70 FEHBP public relations and advertising costs.
1631.205–71 FEHBP bad debts.
1631.205–72 FEHBP compensation for personal services.
1631.205–73 FEHBP interest expense.
1631.205–74 FEHBP losses on other contracts.
1631.205–75 Selling costs.
1631.205–76 Trade, business, technical and professional activity costs.
1631.205–77 FEHBP start-up and other nonrecurring costs.
1631.205–78 FEHBP printed material costs.
1631.205–79 Mandatory statutory reserves.
1631.205–80 Major subcontractor service charges.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

Subpart 1631.2—Contracts With Commercial Organizations

1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

1631.201–70 FEHBP credits.

The provisions of FAR 31.201–5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments that include, but are not limited to—

(a) Coordination of benefit refunds;

(b) Hospital year-end settlements;

(c) Uncashed and returned checks;

(d) Utilization review refunds;

(e) Refunds attributable to litigation with subscribers or providers of health services; and

(f) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

1631.203–70 FEHBP General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a ''dividend or retention formula.''

1631.205 Selected costs.

1631.205–41 Taxes.

5 U.S.C. 8909(f)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities. Therefore, FAR 31.205–41 is modified to include those taxes as unallowable costs. The prohibited payments, referred to elsewhere in these regulations as ''premium taxes,'' applies to all payments directed by States or municipalities, regardless of how they may be titled,

to whom they must be paid, or the purpose for which they are collected, and it applies to all forms of direct and indirect measurements on FEHBP premiums, however modified, to include cost per contract or enrollee, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

[56 FR 57496, Nov. 12, 1991]

1631.205–70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205–1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

1631.205–71 FEHBP bad debts.

Erroneous benefit payments are not automatically disallowed by FAR 31.205–3.

1631.205–72 FEHBP compensation for personal services.

Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

1631.205–73 FEHBP interest expense.

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205–20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

1631.205–74 FEHBP losses on other contracts.

FAR 31.205–23 shall not be construed to prohibit the application of the normal ''loss carry forward'' principle that is fundamental to continuing insurance contracts that are based on experience rating.

1631.205–75 Selling costs.

(a) FAR 31.205–38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season Health fairs and other similar activities at which carriers give enrollees information about their choices among health plans (but see FAR 31.205–1 'Public relations and advertising costs', and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices, Subchapter S2–3(f) 'Controlling contacts between employees and carriers').

[52 FR 16041, May 1, 1987, as amended at 62 FR 47575, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997 section 1631.205–75(b), was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1631.205–75 Selling costs.

* * * * *

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season health fairs and other similar activities sponsored by Government agencies (but see FAR 31.205–1 ''Public relations and advertising costs'', and Federal Personnel Manual Supplement 890–1, Subchapter S2–3(f) ''Controlling contacts between employees and carriers'').

1631.205–76 Trade, business, technical, and professional activity costs.

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205–43) when the allocable costs of such participation to the FEHBP will exceed $1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

1631.205–77 FEHBP start-up and other nonrecurring costs.

Precontract costs (FAR 31.205–32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

1631.205–78 FEHBP printed material costs.

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the ''rider system'' from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

1631.205–79 Mandatory statutory reserves.

Charges for mandatory statutory reserves are not allowed unless provided for in the contract. When the term ''mandatory statutory reserve'' is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the carrier and which may be used only with the

specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the carrier, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

1631.205–80 Major subcontractor service charges.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

PART 1632—CONTRACT FINANCING

Subpart 1632.1—General

Sec.
1632.170 Recurring premium payments to carriers.
1632.171 Clause—community-rated contracts.
1632.172 Clause—experience-rated contracts.

Subpart 1632.6—Contract Debts

1632.607 Tax credit.
1632.617 Contract clause.

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.
1632.771 Non-commingling of FEHBP funds.
1632.772 Contract clause.

Subpart 1632.8—Assignment of Claims

1632.806–70 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1632.1—General

1632.170 Recurring premium payments to carriers.

(a) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(b)(1) *Recurring payments to carriers of experience-rated plans.* OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan, less the amounts credited to the contingency and administrative reserves, will be made available for carrier drawdown not later than 30 days after receipt by the FEHB Fund. In addition, contingency reserve and interest distribution payments will be made available for carrier drawdown from the LOC account. Carriers will use the LOC account in accordance with guidelines issued by OPM.

(2) Withdrawals from the LOC account will be made on a checks-presented basis. Under a checks-presented bases, drawdown on the LOC is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment.

(3) OPM may grant a waiver of the restriction of LOC disbursements to a checks-presented basis if the carrier requests the waiver in writing and demonstrates to OPM's satisfaction that the checks-presented basis of LOC disbursements will result in significantly increased liability under the contract, or that the checks-presented basis of LOC disbursements is otherwise clearly and significantly detrimental to the operation of the plan. Payments to carriers that have been granted a waiver may be made by an alternative payment methodology, subject to OPM approval.

[57 FR 14360, Apr. 20, 1992]

1632.171 Clause—community-rated contracts.

The clause at 1652.232–70 shall be inserted in all community-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

1632.172 Clause—experience-rated contracts.

The clause at 1652.232–71 shall be inserted in all experience-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

Subpart 1632.6—Contract Debts

1632.607 Tax credit.

FAR 32.607 has no practical application to FEHBP contracts. The statutory provisions at 5 U.S.C. 8906(c) and (d) authorize joint enrollee and Government contributions to the FEHBP Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, carriers may not offset debts to the Fund by a tax credit which is solely a Government obligation.

1632.617 Contract clause.

The clause at (FAR) 48 CFR 52.232–17 will be modified in all FEHBP contracts to exclude the words ''net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481).''

[59 FR 14765, Mar. 30, 1994]

Subpart 1632.7—Contract Funding

1632.770 Contingency reserve payments.

(a) Payments from the contingency reserve shall be made in accordance with 5 CFR 890.503.

(b) A carrier for an FEHB plan may apply to OPM at any time for a payment from the contingency reserve that is in addition to those amounts, if any, paid under 5 CFR 890.503(c)(1) through (c)(4), if the carrier can show good cause, such as, unexpected adverse claims experience. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. However, OPM shall not unreasonably withhold approval for amounts requested that exceed the plan's preferred minimum balance for the contingency reserve.

1632.771 Non-commingling of FEHBP funds.

(a) This section applies to contracts based on cost analysis.

(b) Carrier or underwriter commingling of FEHBP funds with those from other sources makes it difficult to precisely determine FEHBP cash balances at any given time or to precisely determine investment income attributable to FEHBP invested assets.

(c) FEHBP funds shall be maintained separately from other cash and investments of the carrier or underwriter. Cash and investment balances reported on FEHBP Annual Accounting Statements must agree with the carrier's books and records.

(d) This requirement may be waived by the contracting officer in accordance with the clause at 1652.232–70 when adequate accounting and other controls are in effect. If the requirement is waived, the waiver will remain in effect until it is withdrawn by OPM. The waiver shall be withdrawn if OPM determines that the accounting controls are no longer adequate to properly account for FEHBP funds.

1632.772 Contract clause.

The clause at 1652.232–70 shall be included in all contracts that are based on cost analysis.

Subpart 1632.8—Assignment of Claims

1632.806–70 Contract clause.

The clause set forth in 1652.232–73 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

PART 1633—PROTESTS, DISPUTES, AND APPEALS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1633.070 Designation of the Board of Contract Appeals.

The Armed Services Board of Contract Appeals (ASBCA) serves as the Board of Contract Appeals for the

FEHBP. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

[52 FR 16043, May 1, 1987]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1642—CONTRACT ADMINISTRATION

Subpart 1642.12—Novation and Change-of-Name Agreements

Sec.
1642.1201 Definitions.
1642.1204 Agreement to recognize a successor in interest (novation agreement).
1642.1205 Agreement to recognize carrier's change of name.

Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 59 FR 14765, Mar. 30, 1994, unless otherwise noted.

Subpart 1642.12—Novation and Change-of-Name Agreements

1642.1201 Definitions.

The definitions at (FAR) 48 CFR 42.1201 shall have the same meaning for this subpart.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

(a) (FAR) 48 CFR 42.1204 shall be implemented as provided in this section. The contracting officer shall insert the following agreement in all FEHBP contracts for use when the contractor's assets or the entire portion of the assets pertinent to the performance of the contract, as determined by the Government, are transferred.

NOVATION AGREEMENT

The *(insert corporate name)* (Transferor), a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city, state)*; the *(insert corporate name)* (Transferee), (if appropriate add ''formerly known as the _____ Corporation'') a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city)*; and the UNITED STATES OF AMERICA (Government) enter into this Agreement effective *(insert date transfer of assets became effective under applicable State law)*.

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number _____ with the Transferor. The term *contracts*, as used in this Agreement, means the contract cited in this paragraph and all other contracts and purchase orders, including any and all amendments and modifications made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) As of ___ 19__ (insert date transfer of assets became effective under applicable State law), the Transferor has transferred to the Transferee all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of a(an) *(insert term describing the legal transaction involved)* between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(4) The Transferee has assumed all obligations and liabilities of the Transferor pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(5) The Transferee is in a position to fully perform all obligations that may exist under the contract.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the transfer in paragraph (a)(1) has been filed with the Government.

(8) [If applicable:] A certificate dated ___, 19__, signed by the Secretary of State of (*insert State*), to the effect that the corporate name of (*insert old corporate name*) was changed to (*insert new corporate name*) on ___, 19__, has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government or the Federal Employees Health Benefits Fund that it now has or may have in the future in connection with the contract.

(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor pertinent to the contract, as determined by OPM, as if the Transferee were the original party to the contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contract as if the Transferee were the original party to the contract. Following the effective date of this Agreement, the terms *Carrier* and *Contractor* as used in the contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contract, shall be considered to have discharged those parts of the Government's obligations under the contract. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should this contract be modified under its terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement effective (*insert the date transfer of assets became effective under applicable State law*).

UNITED STATES OF AMERICA,
By _____ Date_____
Title _____

(Enter Transferor's name)

By _____ Date_____
Title _____

(Corporate Seal)

(Enter Transferee's name)

By _____
Title _____

(Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of (*insert name of Transferor*); that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____, 19____.

By _____

(Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of (insert name of Transferee); that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____ 19__,

By _____

(Corporate Seal)

(End of Agreement)

(b) Failure to submit the properly completed and signed Novation Agreement in a timely manner shall be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

(c) The Contracting Officer shall terminate the contract if it is determined not to be in the Government's interest to recognize a successor in interest to the contract. The effective date will be decided by the Contracting Officer after considering the best interests of FEHBP enrollees.

1642.1205 Agreement to recognize carrier's change of name.

(a) (FAR) 42.1205 shall be implemented as provided in this section. The Contracting Officer shall insert the following Agreement in all FEHBP contracts for use when the carrier changes its name and the Government's and contractor's rights and obligations remain unaffected.

CHANGE-OF-NAME AGREEMENT

The (insert new Carrier name), a corporation duly organized and existing under the laws of (insert State), and the UNITED STATES OF AMERICA (Government), enter into this Agreement effective (insert date when the change of name became effective under applicable State law).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number _____ with the (insert old Carrier name). The term *contracts* as used in this Agreement means the contract cited in this paragraph and all other contracts and purchase orders and all modifications thereto made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the OPM or the Carrier has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The (insert old Carrier name), by an amendment to its certificate of incorporation, dated ___, 19__, has changed its corporate name to (insert new Carrier name).

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and the Carrier under the contract are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

(1) The contract is amended by substituting the name " (insert new Carrier name)" for the name "(insert old Carrier name)" wherever it appears in the contract; and

(2) Each party has executed this Agreement effective the day and year stated in paragraph (a)(2).

UNITED STATES OF AMERICA,

_____ Date _____ _____

Title _____

(Enter new Carrier name)

By _____ Date _____

Title _____

(Corporate Seal)

CERTIFICATE

I, _____, certify that I am the Secretary of (insert new Carrier name); that _____, who signed this Agreement for this corporation, was then (insert position held) of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ___ day of ___ 19__.

By _____

(Corporate Seal)

(End of Agreement)

(b) Failure to submit the properly completed and signed Change-of-Name Agreement in a timely manner may be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

When it is in the best interest of FEHBP enrollees to continue a contract for an interim period after the carrier discontinues its operations and has entered into a Purchase and Sale Agreement (or other descriptive term), but before a successor in interest has been recognized by OPM, the carrier may submit for OPM approval a Management Agreement that enables it to continue a contract through an agreement with a third party to administer the day-to-day performance of the contract. Examples of situations in which a Management Agreement may be accepted by OPM are:

(a) When a transfer of assets does not meet the criteria for a novation;

(b) While a request for a novation is pending;

(c) While awaiting a decision on a request for a novation;

(d) As an interim measure, when the timing of a transfer of assets or the timing of a carrier's withdrawal make administration of the contract inconvenient;

(e) When it is not in the interests of the Government to either recognize a successor in interest or to immediately

terminate the existing FEHBP contract.

PART 1643—CONTRACT MODIFICATIONS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 62 FR 47575, Sept. 10, 1997, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, part 1643 was added, effective Oct. 10, 1997.

Subpart 1643.2—Changes

1643.205–70 Contract clause.

The clause set forth in section 1652.243–70 shall be inserted in all FEHB Program contracts.

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1644.1—General

Sec.
1644.170 Policy for FEHBP subcontracting consent.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

Subpart 1644.1—General

1644.170 Policy for FEHBP subcontracting consent.

For all experience rated FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged against the FEHBP contract exceeds $100,000 and is at least 25 percent of the total cost of the subcontract.

[62 FR 47575, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47575, Sept. 10, 1997, section 1644.170 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1644.170 Policy for FEHBP subcontracting consent.

For all FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged the FEHBP contract exceeds $100,000.

Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

The clause set forth at section 1652.244–70 shall be inserted in all experience rated FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1644.270 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1644.270 FEHBP contract clause.

The clause set forth at 1652.244–70 shall be inserted in all FEHBP contracts.

PART 1645—GOVERNMENT PROPERTY

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 62 FR 47576, Sept. 10, 1997, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, part 1645 was added, effective Oct. 10, 1997.

Subpart 1645.3—Providing Equipment

1645.303–70 Contract clause.

The clause set forth in section 1652.245–70 shall be inserted in all FEHB Program contracts.

PART 1646—QUALITY ASSURANCE

Subpart 1646.2—Contract Quality Requirements

Sec.
1646.270 General.

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1646.2—Contract Quality Requirements

1646.270 General.

(a) This section prescribes general policies and procedures to ensure that services acquired under the FEHBP contract conform to the contract's quality requirements.

(b) OPM shall periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. After the initial review, subsequent reviews may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

(c) OPM will issue specific performance standards for the FEHBP contracts and will inform carriers of the applicable performance standards prior to negotiations for the contract year. OPM will benchmark its standards against standards generally accepted in the insurance industry. The contracting officer may authorize nationally recognized standards to be used to fulfill this requirement.

(d) FEHBP carriers shall comply with the performance standards issued under paragraph (c) of this section.

[59 FR 14767, Mar. 30, 1994]

Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

The clause set forth at 1652.246–70 shall be inserted in all FEHBP contracts.

[52 FR 16044, May 1, 1987]

PART 1649—TERMINATION OF CONTRACTS

Sec.

1649.002–70 Applicability of the FAR to FEHB acquisitions.

Subpart 1649.1—General Principles

1649.101–70 FEHBP renewal and withdrawal of approval clause.
1649.101–71 FEHBP termination for convenience clause.
1649.101–72 FEHBP termination for default clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1649.002–70 Applicability of the FAR to FEHB acquisitions.

(a) Termination of FEHB contracts because of withdrawal of approval is controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204.

(b) Termination of FEHB contracts because of nonrenewal of the contract at the end of the contract term is controlled by 5 U.S.C. 8902(a) and 5 CFR 890.205.

(c) The procedures for settlement of contracts after they are terminated shall be those contained in FAR part 49.

[57 FR 19387, May 6, 1992]

Subpart 1649.1—General Principles

1649.101–70 FEHBP renewal and withdrawal of approval clause.

The clause in 1652.249–70 shall be inserted in all FEHBP contracts.

1649.101–71 FEHBP termination for convenience clause.

The clause set forth in 1652.249–71 shall be inserted in all FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1649.101–71 was added, effective Oct. 10, 1997.

1649.101–72 FEHBP termination for default clause.

The clause set forth in 1652.249–72 shall be inserted in all FEHBP contracts.

[62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1649.101–72 was added, effective Oct. 10, 1997.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

Sec.
1652.000 Applicable clauses.

Subpart 1652.2—Texts of FEHBP Clauses

1652.203–70 Misleading, deceptive, or unfair advertising.
1652.204–70 Contractor records retention.
1652.204–71 Coordination of Benefits.
1652.204–72 Filing health benefit claims/court review of disputed claims.
1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.
1652.215–71 Investment Income.
1652.216–70 Accounting and price adjustment.
1652.216–71 Accounting and Allowable Cost.
1652.222–70 Notice of significant events.
1652.224–70 Confidentiality of Records.
1652.232–70 Payments—community-rated contracts.
1652.232–71 Payments—experience-rated contracts.
1652.232–72 Non-commingling of FEHBP funds.
1652.229–70 Taxes—Foreign Negotiated benefits contracts.
1652.232–73 Approval for the Assignment of Claims.
1652.243–70 Changes—Negotiated benefits contracts.
1652.244–70 Subcontracts.
1652.245–70 Government property (negotiated benefits contracts).
1652.246–70 FEHB Inspection.
1652.249–70 Renewal and withdrawal of approval.
1652.249–71 FEHBP termination for convenience of the government—negotiated benefits contracts.
1652.249–72 FEHBP termination for default—negotiated benefits contracts.

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

1652.000 Applicable clauses.

The clauses of FAR subpart 52.2 shall be applicable to FEHBP contracts as specified in the FEHBAR Clause Matrix in subpart 1652.3.

Section and Clause Title

52.202–1 Definitions.
52.203–3 Gratuities.
52.203–5 Covenant Against Contingent Fees.
52.203–7 Anti-Kickback Procedures.
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
52.215–2 Audit and Records—Negotiation.
52.215–22 Price Reduction for Defective Cost or Pricing Data.
52.215–24 Subcontractor Cost or Pricing Data.
52.215–27 Termination of Defined Benefit Pension Plans.
52.215–30 Facilities Capital Cost of Money.
52.215–31 Waiver of Facilities Capital Cost of Money.
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
52.222–1 Notice to the Government of Labor Disputes.
52.222–3 Convict Labor.
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.
52.222–21 Certification of Nonsegregated Facilities.
52.222–26 Equal Opportunity.
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts.
52.222–29 Notification of Visa Denial.
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222–36 Affirmative Action for Handicapped Workers.
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
52.223–2 Clean Air and Water.
52.223–6 Drug-Free Workplace.
52.227–1 Authorization and Consent.
52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.229–3 Federal, State,and Local Taxes.
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract).
52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
52.230–2 Cost Accounting Standards.
52.230–3 Disclosure and Consistency of Cost Accounting Practices.
52.230–5 Administration of Cost Accounting Standards.
52.232–8 Discounts for Prompt Payment.
52.232–17 Interest.

52.232–23 Assignment of Claims.
52.232–33 Mandatory Information For Electronic Funds Transfer Payment.
52.233–1 Disputes.
52.242–1 Notice of Intent to Disallow Costs.
52.242–3 Penalties for Unallowable Costs.
52.242–13 Bankruptcy.
52.244–5 Competition in Subcontracting.
52.244–6 Subcontracts for Commercial Items and Commercial Components.
52.246–25 Limitation of Liability—Services.
52.247–63 Preference for U.S.-Flag Air Carriers.
52.251–1 Government Supply Sources.
52.232–2 Clauses Incorporated by Reference.
52.252–4 Alterations in Contract.
52.252–6 Authorized Deviations in Clauses.

[62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1652.000 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1652.000 Applicable clauses.

The clauses of subpart 52.2 specified below shall be applicable to FEHBP acquisitions.

SECTION AND CLAUSE TITLE

52.202–1 Definitions (Apr. 1984).
52.203–1 Officials not to Benefit (Apr. 1984).
52.203–3 Gratuities (Apr. 1984).
52.203–5 Covenant Against Contingent Fees (Apr. 1984).
52.203–7 Anti-Kickback Procedures.
52.203–9 Requirement for Certificate of Procurement Integrity—Modification.
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
52.215–1 Examination of Records by Comptroller General (Apr. 1984).
52.215–2 Audit—Negotiation (Jan. 1987).
52.215–22 Price Reduction for Defective Cost or Pricing Data (Apr. 1984).
52.215–23 Price Reduction for Defective Cost or Pricing Data—Modifications (Apr. 1985).
52.215–24 Subcontractor Cost or Pricing Data (Apr. 1985).
52.215–25 Subcontractor Cost or Pricing Data—Modifications (Apr. 1985).
52.215–30 Facilities Capital Cost of Money (Apr. 1984).
52.215–31 Waiver of Facilities Capital Cost of Money (Apr. 1984).
52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (June 1985).
52.219–13 Utilization of Women-Owned Small Businesses (Aug. 1986).
52.220–3 Utilization of Labor Surplus Area Concerns (Apr. 1984).
52.222–3 Convict Labor (Apr. 1984).
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Mar. 1986).
52.222–26 Equal Opportunity (Apr. 1984).
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts (Apr. 1984).
52.222–29 Notification of Visa Denial (Apr. 1984).
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr. 1984).
52.222–36 Affirmative Action for Handicapped Workers (Apr. 1984).
52.223–2 Clean Air and Water (Apr. 1984).
52.223–6 Drug-Free Workplace.
52.229–3 Federal, State, and Local Taxes (Apr. 1984).
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract) (Apr. 1984).
52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (Apr. 1984).
52.229–6 Taxes—Foreign Fixed-Price Contracts (Apr. 1984).
52.230–2 Cost Accounting Standards.
52.230–3 Disclosure and Consistency of Cost Accounting Practices.
52.230–5 Administration of Cost Accounting Standards.
52.230–6 Consistency in Cost Accounting Practices (Apr. 1984).
52.232–1; 1632.111 Payments (Jan. 1987).
52.232–8 Discounts for Prompt Payment (July 1985).
52.232–11 Extras (Apr. 1984).
52.232–17; 1632.617 Interest (Jan. 1987).
52.232–23 Assignment of Claims (Jan. 1986).
52.232–24 Prohibition of Assignment of Claims (Jan. 1986).
52.233–1 Disputes (Apr. 1984).
52.242–1 Notice of Intent to Disallow Costs (Apr. 1984).
52.242–13 Bankruptcy.
52.243–1 Changes—Fixed Price—Alternate I (Apr. 1984).
52.244–5 Competition in Subcontracting (Apr. 1984).
52.245–2 Government Property (Fixed-Price Contracts) (Apr. 1984).
52.246–25 Limitation of Liability—Services (Apr. 1984).
52.247–63 Preference for U.S.-Flag Air Carriers (Apr. 1984).
52.249–2 Termination for Convenience of the Government (Fixed-Price).
52.249–8 Default (Fixed-Price Supply and Service).
52.251–1 Government Supply Sources (Apr. 1984).
52.252–2 Clauses Incorporated by Reference (Apr. 1984).
52.252–4 Alterations in Contract (Apr. 1984).
52.252–6 Authorized Deviations in Clauses (Apr. 1984).

[52 FR 16044, May 1, 1987, as amended at 59 FR 14767, Mar. 30, 1994]

Subpart 1652.2—Texts of FEHBP Clauses

1652.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.7003, the following clause shall be inserted in all FEHBP contracts:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (JAN 1991)

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful and not misleading.

(b) Criteria to assess compliance with paragraph (a) of this clause are available in the FEHB Supplemental Literature Guidelines which are developed by OPM and should be used, along with the additional guidelines set forth in FEHBAR 1603.702, as the primary guide in preparing material; further guidance is provided in the NAIC ''Rules Governing Advertising of Accident and Sickness Insurance With Interpretive Guidelines.'' Guidelines are periodically updated and provided to the Carrier by OPM.

(c) Failure to conform to paragraph (a) of this clause may result in a reduction in the service charge, if appropriate, and corrective action to protect the interest of Federal Members. Corrective action will be appropriate to the circumstances and may include, but is not limited to the following actions by OPM:

(1) Directing the Carrier to cease and desist distribution, publication, or broadcast of the material;

(2) Directing the Carrier to issue corrections at the Carrier's expense and in the same manner and media as the original material was made; and

(3) Directing the Carrier to provide, at the Carrier's expense, the correction in writing by certified mail to all enrollees of the Plan(s) that had been the subject of the original material.

(d) Egregious or repeated offenses may result in the following action by OPM:

(1) Suspending new enrollments in the Carrier's Plan(s);

(2) Providing Enrollees an opportunity to transfer to another plan; and

(3) Terminating the contract in accordance with Section 1.15, Renewal and Withdrawal of Approval.

(e) Prior to taking action as described in paragraphs (c) and (d) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(f) The Carrier shall incorporate this clause in subcontracts with its underwriter, if any, and other subcontractors directly involved in the preparation or distribution of such advertising material and shall substitute ''Contractor'' or other appropriate reference for the term ''Carrier.''

(End of Clause)

[55 FR 27415, July 2, 1990, as amended at 62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1652.203–70 was amended by removing the reference '1603.703' and adding in its place the reference '1603.7003', effective Oct. 10, 1997

1652.204–70 Contractor records retention.

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

Contractor Records Retention (Jan 1998)

Notwithstanding the provisions of section 5.7 (FAR 52.215–2(f)) ''Audit and Records-Negotiation,'' the Carrier shall retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that exceed the threshold at FAR 15.804–2(a)(1), the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.

(End of Clause)

[62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1652.204–70 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1652.204–70 Contractor records retention.

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

Contractor Records Retention (Jan 1991)

Notwithstanding the provisions of section 5.7 (FAR 52.215–2(d)) ''Audit-Negotiation'' and the SF 1412, the Carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that individual enrollee and/or patient claim records shall be

maintained for 3 years after the end of the contract term to which the claim records relate.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27415, July 2, 1990]

1652.204–71 Coordination of Benefits.

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

COORDINATION OF BENEFITS (JAN 1991)

(a) The Carrier shall coordinate the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault or other automobile insurance that pays benefits without regard to fault.

(b) The Carrier shall not pay benefits under this contract until it has determined whether it is the primary carrier or unless permitted to do so by the Contracting Officer.

(c) In coordinating benefits between plans, the Carrier shall follow the order of precedence established by the NAIC Model Guidelines for Coordination of Benefits (COB) as specified by OPM.

(d) Where (1) the Carrier makes payments under this contract which are subject to COB provisions; (2) the payments are erroneous, not in accordance with the terms of the contract, or in excess of the limitations applicable under this contract; and (3) the Carrier is unable to recover such COB overpayments from the Member or the providers of services or supplies, the Contracting Officer may allow such amounts to be charged to the contract; the Carrier must be prepared to demonstrate that it has made a diligent effort to recover such COB overpayments.

(e) COB savings shall be reported by experience rated carriers each year along with the Carrier's annual accounting statement in a form specified by OPM.

(f) Changes in the order of precedence established by the NAIC Model Guidelines implemented after January 1 of any given year shall be required no earlier than the beginning of the following contract term.

(End of Clause)

[55 FR 27415, July 2, 1990]

§ 1652.204–72 Filing health benefit claims/court review of disputed claims.

As prescribed in 1604.7101 of this chapter, the following clause must be inserted in all FEHB Program contracts.

FILING HEALTH BENEFIT CLAIMS/COURT REVIEW OF DISPUTED CLAIMS (MAR 1995)

(a) *General.* (1) The Carrier resolves claims filed under the Plan. All health benefit claims must be submitted initially to the Carrier. If the Carrier denies a claim (or a portion of a claim), the covered individual may ask the Carrier to reconsider its denial. If the Carrier affirms its denial or fails to respond as required by paragraph (b) of this clause, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the Carrier and OPM review processes specified in this clause before seeking judicial review of the denied claim.

(2) This clause applies to covered individuals and to other individuals or entities who are acting on the behalf of a covered individual and who have the covered individual's specific written consent to pursue payment of the disputed claim.

(b) Time limits for reconsidering a claim. (1) The covered individual has 6 months from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the Carrier in which to submit a written request for reconsideration to the Carrier. The time limit for requesting reconsideration may be extended when the covered individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(2) The Carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to make a decision on the claim. The Carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The Carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The Carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the Carrier's notice requesting additional information. The Carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this clause if the Carrier fails to act within the time limit set forth in this paragraph.

(3) The covered individual may write to OPM and request that OPM review the Carrier's decision if the Carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within the time limit set forth

in paragraph (b)(2) of this clause. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this clause.

(4) The Carrier may extend the time limit for a covered individual's submission of additional information to the Carrier when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration*. (1) The covered individual must put the request to the Carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the Carrier needs additional information from the covered individual to make a decision, it must:

(i) Specifically identify the information needed;

(ii) State the reason the information is required to make a decision on the claim;

(iii) Specify the time limit (60 days after the date of the Carrier's request) for submitting the information; and

(iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(d) *Carrier determinations.* The Carrier must provide written notice to the covered individual of its determination. If the Carrier affirms the initial denial, the notice must inform the covered individual of:

(1) The specific and detailed reasons for the denial;

(2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the Carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review*. (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the Carrier's decision. Such a request to OPM must be made:

(i) Within 90 days after the date of the Carrier's notice to the covered individual that the denial was affirmed; or

(ii) If the Carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this clause, within 120 days after the date of the covered individual's timely request for reconsideration by the Carrier; or

(iii) Within 120 days after the date the Carrier requests additional information from the covered individual, or the date the covered individual is notified that the Carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the Carrier, OPM may:

(i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the Carrier, the Carrier must release the information within 30 days after the date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the Carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this clause, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the Carrier.

(f) OPM, upon its own motion, may reopen its review if it receives evidence that was unavailable at the time of its original decision.

(g) *Court review*. (1) A suit to compel enrollment under § 890.102 of Title 5, Code of Federal Regulations, must be brought against the employing office that made the enrollment decision.

(2) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(3) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of Federal statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM and not against the Carrier or the Carrier's subcontractors. The recovery in such a suit shall be limited to a court order directing OPM to require the Carrier to pay the amount of benefits in dispute.

(4) An action under paragraph (3) of this clause to recover on a claim for health benefits:

(i) May not be brought prior to exhaustion of the administrative remedies provided in paragraphs (a) through (f) of this clause;

(ii) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and

(iii) Will be limited to the record that was before OPM when it rendered its decision affirming the Carrier's denial of benefits.

(End of Clause)

[61 FR 15198, Apr. 5, 1996, as amended at 62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1652.204–72 was amended by adding a date in the clause title, effective Oct. 10, 1997

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.804–72, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.804–2(a)(1) that are based on a combination of cost and price analysis (community rated):

RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (JAN 1998)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.804–70); (2) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

(i) The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Carrier did not submit or keep in its files a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (b)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used; and,

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent.

(End of Clause)

[62 FR 47576, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47576, Sept. 10, 1997, section 1652.215–70 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.804–72, the following clause shall be inserted in contracts based on established market price:

RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (OCT 1994)

If any rate established in connection with this contract was increased because (1) the Carrier furnished cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Pricing for Community Rated Plans (FEHBAR 1615.804–70); (2) the Carrier furnished pricing data that were not accurate as represented on the Claim for Exemption from Submission of Certified Cost or Pricing Data (SF 1412); (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–11) as certified in the Certificate of Accurate Pricing for Community Rated Plans or represented in the Supplemental Representation for SF 1412; or (4) the Carrier furnished data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information. When the Contracting Office determines that the Carrier did not charge a market price and the Government is entitled to a refund, the refund shall bear simple interest from the date the overcharge was paid by the Government to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used.

(End of Clause)

[55 FR 27415, July 2, 1990, as amended at 59 FR 62346, Dec. 5, 1994]

1652.215–71 Investment Income.

As prescribed in 1615.805–71, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

INVESTMENT INCOME (JAN 1998)

(a) The Carrier shall invest and reinvest all FEHB funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier shall seek to maximize investment income with prudent consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHB funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier failed to comply with paragraph (a) or (b) of this clause, the Carrier shall credit the Special Reserve with investment income that would have been earned, at the rate(s) specified in paragraph (f) of this clause, had it not been for the Carrier's noncompliance. ''Failed to comply with paragraph (a) or (b)'' means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place excess funds, including subscription income and payments from OPM not needed to discharge promptly the obligations incurred under the contract, refunds, credits, payments, deposits, investment income earned, uncashed checks, or other amounts owed the Special Reserve, in income producing investments and accounts.

(d) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(e) Investment income lost as a result of failure to credit income due the contract or failure to place excess funds in income producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All lost investment income payable shall bear simple interest at the quarterly rate determined by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

(g) The Carrier shall incorporate this clause into agreements with underwriters of the Carrier's FEHB plan and shall substitute ''underwriter'' or other appropriate reference for the term ''Carrier.''

(End of Clause)

[55 FR 27416, July 2, 1990, as amended at 62 FR 47577, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47577, Sept. 10, 1997, section 1652.215–71 was amended by removing ''(Jan 1991)'' from the title Investment Income and adding in its place ''(Jan 1998)'' and by revising paragraph (f), effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1652.215–71 Investment Income.

* * * * *

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Public Law 95–563), which is applicable to the period in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause. Thereafter, the rate shall be the rate applicable for each 6-month period as fixed by the Secretary until the amount is paid.

* * * * *

1652.216–70 Accounting and price adjustment.

As prescribed in section 1616.7001, the following clause shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

ACCOUNTING AND PRICE ADJUSTMENT (JAN 1998)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR 1602.170–2.

(2) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBAR 1602.170–13.

(3) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period.

(4) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the Carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the subscription rates prior to rate reconciliation and the actual subscription rates.

(End of Clause)

[62 FR 47577, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47577, Sept. 10, 1997, section 1652.216–70 was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1652.216–70 Accounting and price adjustment.

As prescribed in 1616.270, the following clause shall be inserted in all FEHBP contracts based on established market price:

ACCOUNTING AND PRICE ADJUSTMENT (JAN 1990)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR §1602.170–2.

(2) The subscription rates agreed to in this contract are derived from the market price, which is a per member per month (PMPM) capitation or its equivalent that applies to a combination of subscriber groups. The market price established in this contract may be an estimate of the Carrier's actual market price that will be in effect during the contract period.

(3) If, for the contract period, the Carrier establishes an actual market price higher than the market price established for this contract and the higher market price is actually paid by the similarly sized subscriber groups (see FEHBAR 1602.170–11), the Carrier may include an adjustment to the next contract period's FEHBP rates to recover the difference between the estimated market price and the actual market price.

(4) If for the contract period, the Carrier establishes an actual market price lower than the market price established for this contract and the lower market price is actually paid by similarly sized subscriber

groups, the Carrier shall reimburse the Fund, for example, by reducing the next contract period's FEHB rates to reflect the difference between the estimated market price and the actual market price.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the estimated and the actual market price, PMPM capitation or revenue requirement.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27416, July 2, 1990]

1652.216–71 Accounting and Allowable Cost.

As prescribed in section 1616.7002, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

ACCOUNTING AND ALLOWABLE COST (JAN 1991)

(a) *Annual Accounting Statement.* (1) The Carrier, not later than the date specified by the contract, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM and shall include, among other things, a Balance Sheet and a Summary Statement of FEHBP Financial Operations. The Summary Statement of FEHBP Financial Operations shall include the following items for each option provided by the contract:

(i) Subscription income received and accrued (including amounts received from the Contingency Reserve);

(ii) Health benefits charges paid and accrued;

(iii) Administrative expenses and other charges paid and accrued;

(iv) Income on investments;

(v) Other adjustments;

(vi) Sum of items (i) minus (ii) minus (iii) plus (iv) plus or minus (v).

(2) The Carrier shall have its most recent financial statement and that of its underwriter, if any, audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM not later than 180 days after the end of the contract period.

(3) Based on the results of either the independent audit or a Government audit, the Carrier's annual accounting statements may be (i) adjusted by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a contract period shall be the actual, necessary and reasonable amounts incurred with proper justification and accounting support, determined in accordance with the terms of this contract, subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers, less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205–41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* The Carrier is required to invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses as a result of investing the FEHBP funds. The direct or allocable indirect expenses incurred in managing the investment program, such as consultant or management fees are chargeable against the investment income earned.

(iv) *Other charges*—(A) *Mandatory statutory reserves.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term

''mandatory statutory reserve'' is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, a pro rata share based upon FEHBP's contribution to the total Carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201–5.

(B) *Premium taxes.* When the term *premium taxes* is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. The certificate shall be signed by the chief executive officer and the chief financial officer of the Carrier.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

Certification of Accounting Statement Accuracy

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this contract period in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: _____

_____

Name of Chief Executive Officer
(Type or Print)

_____

Name of Chief Financial Officer
(Type or Print)

_____

Signature of Chief Executive Officer

_____

Signature of Chief Financial Officer

_____

Date Signed

_____

Date Signed

_____

Underwriter: _____

Name and Title of Responsible Corporate

Official (Type or Print): _____

Signature of Responsible Corporate Official:

_____

Date Signed: _____

(End of Certificate)

(End of Clause)

[55 FR 27416, July 2, 1990, as amended at 56 FR 57497, Nov. 12, 1991; 57 FR 14360, Apr. 20, 1992; 62 FR 47577, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47577, Sept. 10, 1997, in section 1652.216–71, the introductory sentence was revised, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1652.216–71 Accounting and Allowable Cost.

As prescribed in 1616.271, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

* * * * *

1652.222–70 Notice of significant events.

As prescribed in 1622.103–70, the following clause shall be inserted in all FEHBP contracts.

NOTICE OF SIGNIFICANT EVENTS (JAN 1991)

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant

Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of major assets;

(2) Loss of 15% or more of the Carrier's overall membership;

(3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;

(4) Addition or termination of provider agreements;

(5) Any changes in underwriters, reinsurers, or participating plans;

(6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;

(8) Default on a loan or other financial obligation;

(9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;

(10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or

(11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.

(12) Any fraud, embezzlement or misappropriation of FEHB funds; or

(13) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Carrier to provide an opinion on its annual financial statements.

(b) Upon learning of a Significant Event OPM may institute action, in proportion to the seriousness of the event, to protect the interest of Members, including, but not limited to—

(1) Directing the Carrier to take corrective action;

(2) Suspending new enrollments under this contract;

(3) Advising Enrollees of the Significant Event and providing them an opportunity to transfer to another plan;

(4) Withholding payment of subscription income or restricting access to the Carrier's Letter of Credit account.

(5) Terminating the enrollment of those enrollees who, in the judgment of OPM, would be adversely affected by the Significant Event; or

(6) Terminating this contract pursuant to section 1.15, renewal and withdrawal of approval.

(c) Prior to taking action as described in paragraph (b) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(d) The Carrier shall insert this clause in any subcontract or subcontract modification if both the amount of the subcontract or modification charged to the FEHBP (or, in the case of a community rated carrier, applicable to the FEHBP) exceeds $100,000 and the amount of the subcontract or modification to be charged to the FEHBP (or, in the case of a community rated carrier, applicable to the FEHBP) exceeds 25 percent of the total cost of the subcontract or modification. If the Carrier is a CMP, it shall also insert this clause in all provider agreements over $25,000. If the Carrier is not a CMP, it shall also insert this clause in the contract with its underwriter, if any. The Carrier shall substitute ''Contractor'' or other appropriate reference for the term ''Carrier.''

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

1652.224–70 Confidentiality of records.

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

CONFIDENTIALITY OF RECORDS (JAN 1991)

(a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM's notice of systems of records.

(b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the patient or his or her guardian;

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions;

(4) As necessary to audit the contract;

(5) As necessary to carry out the coordination of benefits provisions of this contract; and

(6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

1652.229–70 Taxes—Foreign Negotiated benefits contracts.

As prescribed in section 1629.402, the following clause shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico:

TAXES—FOREIGN NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) To the extent that this contract provides for performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) ''Contract date,'' as used in this clause, means the effective date of this contract or modification.

''Country concerned,'' as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

''Tax'' and ''taxes,'' as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

''All applicable taxes and duties,'' as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

''After-imposed tax,'' as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions covered by this contract that the Carrier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

''After-relieved tax,'' as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions covered by this contract, but which the Carrier is not required to pay or bear, or for which the Carrier obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

''Excepted tax,'' as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. ''Excepted tax'' does not include gross income taxes levied on or measured by sales or receipts from sales covered by this contract, or any tax assessed on the Carrier's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Carrier is required to pay or bear, including any interest or penalty, if the Carrier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Carrier incident to a refund of taxes to the extent that such interest was earned after the Carrier was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Carrier to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Carrier is required to pay or bear, or does not obtain a refund of, through the Carrier's fault, negligence, or

failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(h) If the Carrier obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Carrier shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Carrier, any subcontractor, or the transactions covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Carrier shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Carrier at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

[62 FR 47577, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47577, Sept. 10, 1997, section 1652.229–70 was added, effective Oct. 10, 1997.

1652.232–70 Payments—community-rated contracts.

As prescribed in 1632.171, the following clause shall be inserted in all community-rated FEHBP contracts:

PAYMENTS (JAN 1989)

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14360, Apr. 20, 1992; 62 FR 47578, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47578, Sept. 10, 1997, section 1652.232–70 was amended by adding a date in the clause title, effective Oct. 10, 1997.

1652.232–71 Payments—experience-rated contracts.

As prescribed in 1632.172, the following clause shall be inserted in all experience-rated FEHBP contracts:

PAYMENTS (MAY 1992)

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be made available for carrier drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the Carrier reserves are insufficient for that purpose.

(End of Clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14361, Apr. 20, 1992; 62 FR 47578, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47578, Sept. 10, 1997, section 1652.232–71 was amended by adding a date in the clause title, and by removing 'and/or underwriter' from paragraph (c), effective Oct. 10, 1997.

1652.232–72 Non-commingling of FEHBP funds.

As prescribed in 1632.772, the following clause shall be inserted in all contracts based on cost analysis.

NON-COMMINGLING OF FUNDS (JAN 1991)

(a) The Carrier and/or its underwriter shall keep all FEHBP funds for this contract (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) In certain instances the physical separation of FEHBP funds may not be practical or desirable. In such cases, the Carrier may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Carrier shall demonstrate that accounting techniques have been established that will clearly measure FEHBP cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(c) The Carrier shall incorporate this clause in all subcontracts that exceed $25,000 and shall substitute ''contractor'' or other appropriate reference for ''Carrier and/or its underwriter.''

(End of Clause)

[52 FR 16044, May 1, 1987. Redesignated at 53 FR 51784, Dec. 23, 1988, and amended at 55 FR 27418, July 2, 1990]

1652.232–73 Approval for the Assignment of Claims.

As prescribed in 1632.806–70, the following clause shall be inserted in all FEHBP contracts:

APPROVAL FOR ASSIGNMENT OF CLAIMS (JAN 1991)

(a) Notwithstanding the provisions of section 5.35, (FAR 52.232–23) Assignment of Claims, the Carrier shall not make any assignment under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of Clause)

[55 FR 27418, July 2, 1990]

1652.243–70 Changes—Negotiated benefits contracts.

As prescribed in section 1643.205–70, the following clause shall be inserted in all FEHBP contracts.

CHANGES—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Carrier must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Carrier from proceeding with the contract as changed.

(End of clause)

[62 FR 47578, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47578, Sept. 10, 1997, section 1652.243–70 was added, effective Oct. 10, 1997.

1652.244–70 Subcontracts.

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated):

SUBCONTRACTS (JAN 1998)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract, or any subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program exceeds $100,000 and is at least 25 percent of the total cost of the subcontract.

(b) The advance notification required by paragraph (a) of this clause shall include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Carrier's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Carrier shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b), and (c) of this clause where the Carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiation of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Carrier of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provision of subpart 3.7, Service charge.

(g) The Carrier shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Carrier by any subcontractor or vendor that, in the opinion of the Carrier, may result in litigation related in any way to this contract with respect to which the Carrier may be entitled to reimbursement from the Government.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 62 FR 47578, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47578, Sept. 10, 1997, section 1652.244–70 was amended by revising the introductory paragraph, clause date, and paragraph (a) of the clause, effective Oct. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

1652.244–70 Subcontracts.

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts:

SUBCONTRACTS (JAN 1991)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program (in the case of a community rated carrier, applicable to the FEHB Program) exceeds $100,000 and is 25 percent of the total cost of the subcontract.

* * * * *

1652.245–70 Government property (negotiated benefits contracts).

As prescribed in section 1645.303–70, the following clause shall be inserted in all FEHBP contracts.

Government Property (Negotiated Benefits Contracts) (Jan 1998)

(a) Government-furnished property. (1) The Government shall deliver to the Carrier, for use in connection with and under the terms of this contract, the Government-furnished property described in this contract together with any related data and information that the Carrier may request and is reasonably required for the intended use of the property (hereinafter referred to as ''Government-furnished property'').

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished ''as-is'') will be delivered to the Carrier at the times stated in this contract or, if not so stated, in sufficient time to enable the Carrier to meet the contract's performance dates.

(3) If Government-furnished property is received by the Carrier in a condition not suitable for the intended use, the Carrier shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Carrier, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Carrier for the Government, under this contract. The Carrier shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Carrier's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in this contract to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property. (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Carrier, title to which vests in the Government under this paragraph (collectively referred to as ''Government property''), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration. (1) The Carrier shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) subpart 45.5, as in effect on the date of this contract.

(2) The Carrier shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Carrier shall make such repairs as the Government directs. However, if the Carrier cannot effect such repairs within the time required, the Carrier shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Carrier represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement

of property for which the Carrier is responsible shall be accomplished by the Carrier at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this contract, the Carrier assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Carrier. However, the Carrier is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Carrier's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Carrier shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Carrier shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Carrier's premises. Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Carrier's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words ''Government'' and ''Government-furnished'' (wherever they appear in this clause) shall be construed as ''United States Government'' and ''United States Government-furnished'', respectively.

(End of clause)

[62 FR 47578, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47578, Sept. 10, 1997, section 1652.245–70 was added, effective Oct. 10, 1997.

1652.246–70 FEHB Inspection.

As prescribed in 1646.301, the following clause shall be inserted in all FEHBP contracts:

FEHB INSPECTION (JAN 1991)

(a) The Government or its agent has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government or its agent performs inspection or evaluation on the premises of the Carrier or a subcontractor, the Carrier shall furnish and require the subcontractor to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(b) The Carrier shall insert this clause in all subcontracts for underwriting and administrative services and shall substitute ''Contractor'' or other appropriate reference for the term ''Carrier.''

(End of Clause)

[55 FR 27418, July 2, 1990]

1652.249–70 Renewal and withdrawal of approval.

As prescribed in 1649.101–70, the following clause shall be inserted in all FEHBP contracts:

RENEWAL AND WITHDRAWAL OF APPROVAL (JAN 1991)

(a) Pursuant to 5 U.S.C. 8902(a), the contract renews automatically for a term of 1 year each January 1st, unless written notice

of intent not to renew is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement.

(b) This contract also may be terminated at other times by order of OPM pursuant to 5 U.S.C. 8902(e). After OPM notifies the Carrier of its intent to terminate the contract, OPM may take action as it deems necessary to protect the interests of members, including but not limited to—

(1) Suspending new enrollments under the contract;

(2) Advising enrollees of the asserted deficiencies; and

(3) Providing enrollees an opportunity to transfer to another Plan.

(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have at least 300 enrollees enrolled in its plan at any time during the two preceding contract terms.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 57 FR 19388, May 6, 1992]

1652.249–71 FEHBP termination for convenience of the government—negotiated benefits contracts.

As prescribed in section 1649.101–71, the following clause shall be inserted in all FEHBP contracts.

FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts (Jan 1998)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Carrier a Notice of Termination specifying the extent of terminating and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Carrier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Carrier under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, deliver to the Government any data, reports, or studies that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(c) After termination, the Carrier shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Carrier shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Carrier within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Carrier fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Carrier because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) of this clause, the Carrier and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) of this clause, exclusive of costs shown in subparagraph (e)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Carrier paid the agreed amount. Paragraph (e) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(e) If the Carrier and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Carrier the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (d) above:

(1) The contract price for completed services accepted by the Government not previously paid for.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under paragraph (e)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (e)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (e)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(f) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(g) The Carrier shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (c), (e), or (i) of this clause, except that if the Carrier failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (c) or (i), respectively, and failed to request a time extension, there is no right of appeal.

(h) In arriving at the amount due the Carrier under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Carrier under the terminated portion of this contract;

(2) Any claim which the Government has against the Carrier under this contract; and

(i) If the termination is partial, the Carrier may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Carrier for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(j)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Carrier for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Carrier will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Carrier shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Carrier to the date the excess is repaid.

(k) Unless otherwise provided in this contract or by statute, the Carrier shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Carrier's costs and expenses under this contract. The Carrier shall make these records and documents available to the Government, at the Carrier's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

[62 FR 47579, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47579, Sept. 10, 1997, section 1652.249–71 was added, effective Oct. 10, 1997.

1652.249–72 FEHBP termination for default—negotiated benefits contracts.

As prescribed in §1649.101–72, the following clause shall be inserted in all FEHBP contracts.

FEHBP TERMINATION FOR DEFAULT—NEGOTIATED BENEFITS CONTRACTS (JAN 1998)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Carrier, terminate this contract in whole or in part if the Carrier fails to—

(i) Perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Carrier does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or service similar to those terminated, and the Carrier will be liable to the Government for any excess costs for those supplies or services. However, the Carrier shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Carrier shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Carrier. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Carrier.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Carrier and subcontractor, and without the fault or negligence of either, the Carrier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Carrier to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Carrier to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed or partially completed information and contract rights that the Carrier has specifically produced or acquired for the terminated portion of this contract.

(f) If, after termination, it is determined that the Carrier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(g) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

[62 FR 47580, Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47580, Sept. 10, 1997, section 1652.249–72 was added, effective Oct. 10, 1997.

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

(a) The matrix in this section lists the FAR and FEHBAR clauses to be used with contracts based on cost analysis and contracts based on a combination of cost and price analysis. Carriers shall submit initial applications and requests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBAR. An ''M'' in the ''Use Status'' column indicates that the clause is mandatory. An ''A'' indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the matrix indicates a ''T''. If the clause is incorporated by reference, the matrix indicates an ''R''.

FEHBP CLAUSE MATRIX

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.202–1	FAR 2.2	Definitions	M	T	T
FAR 52.203–3	FAR 3.202	Gratuities	M	T	T
FAR 52.203–5	FAR 3.404(c)	Covenant Against Contingent Fees.	M	T	T
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M	T	T
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203–70	1603.703	Misleading, Deceptive, or Unfair Advertising.	M	T	T
1652.204–70	1604.705	Contractor Records Retention	M	T	T
1652.204–71	1604.7001	Coordination of Benefits	M	T	T
1652.204–72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims.	M	T	T
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215–2	FAR 15.105–2(b)	Audit & Records—Negotiations	M	T	T
FAR 52.215–22	FAR 15.804–8(a)	Price Reduction for Defective Cost or Pricing Data.	M	T	
FAR 52.215–24	FAR 15.804–8(c)	Subcontractor Cost or Pricing Data.	M	T	
FAR 52.215–27	FAR 15.804–8(e)	Termination of Defined Benefit Pension Plans.	M	T	
FAR 52.215–30	FAR 15.904(a)	Facilities Capital Cost of Money	M	T	
FAR 52.215–31	FAR 15.904(b)	Waiver of Facilities Capital Cost of Money.	A	T	
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Post Retirement Benefits Other Than Pensions (PRB).	M	T	
FAR 52.215–70	1615.804–72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215–71	1615.805–71	Investment Income	M	T	
1652.216–70	1616.7001	Accounting and Price Adjustment	M		T
1652.216–71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219–8	FAR 19.708(a)	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.	M	T	T
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes.	M	T	T
FAR 52.222–3	FAR 22.202	Convict Labor	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with experience rated contracts	Use with community rated contracts
FAR 52.222–4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M	T	T
FAR 52.222–21	FAR 22.810(a)(1)	Certification of Nonsegregated Facilities.	M	T	T
FAR 52.222–26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222–28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts.	M	T	T
FAR 52.222–29	FAR 22.810(h)	Notification of Visa Denial	A	T	T
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	T	T
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers.	M	T	T
FAR 52.222–37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans of the Vietnam Era.	M	T	T
1652.222–70	1622.103–70	Notice of Significant Events	M	T	T
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223–6	FAR 23.505(b)	Drug-Free Workplace	A	T	T
1652.224–70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M	T	T
FAR 52.227–2	FAR 27.202–2	Notice and Assistance Regarding Patent and Copyright Infringement.	M	T	T
FAR 52.229–3	FAR 29.401–3	Federal, State and Local Taxes	M		T
FAR 52.229–4	FAR 29.401–4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229–5	FAR 29.401–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
1652.229-70	FEHBAR 1629.402	Taxes—Foreign Negotiated Benefits Contracts.	A	T	T
FAR 52.230–2	FAR 30.201–4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230–3–	FAR 30.201–4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230–6	FAR 30.201–4(d)(1)	Administration of Cost Accounting Standards.	A	T	T
FAR 52.232–8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232–17	FAR 32.617(a) Modification: 1632.617	Interest	M	T	T
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232–33	FAR 32.1103(a)&(c)	Mandatory Information for Electronic Funds Transfer Payment.	M	T	T

1652.232–70	1632.171	Payments—Contracts Without Letter of Credit Payment Arrangements.	A		T
1652.323–71	1632.172	Payments—Contracts With Letter of Credit Payment Arrangements.	A	T	
1652.232–72	1632.772	Non-Commingling of FEHBP Funds.	M	T	
1652.232–73	1632.806–70	Approval for Assignment of Claims.	M	T	T
FAR 52.233–1	FAR 33.215	Disputes	M	T	T
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242–3	FAR 42.709–6	Penalties for Unallowable Costs	M	T	
FAR 52.242–13	FAR 42.903	Bankruptcy	M	T	T
1652.243–70	1643.205–70	Changes—Negotiated Benefits Contracts.	M	T	T
FAR 52.244–5	FAR 44.204(e)	Competition in Subcontracting	M	T	
FAR 52.244–6	FAR 44.403	Subcontracts for Commercial Items and Commercial Components.	M	T	
1652.244–70	1644.270	Subcontracts	M	T	
1652.245–70	FAR 1645.303–70	Government Property (Negotiated Benefits Contracts).	M	T	T
FAR 52.246–25	FAR 46.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246–70	1646.301	FEHB Inspection	M	T	T
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers.	M	T	T
1652.249–70	1649.101–70	Renewal and Withdrawal of Approval.	M	T	T
1652.249–71	1649.101–71	FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts.	M	T	T
1652.249–72	1649.101–72	FEHBP Termination for Default—Negotiated Benefits Contracts.	M	T	T
FAR 52.251–1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	A	T	T
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 59 FR 14767, Mar. 30, 1994; 62 FR 47580, Sept. 10, 1997; 62 FR 50435, Sept.25, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47580, Sept. 10, 1997, section 1652.370 was amended in paragraph (a) by removing the words ''established catalog or market price'' in the first sentence and adding in its place the words ''a combination of cost and price analysis;'' and by revising the FEHBP Clause Matrix, effective Oct. 10, 1997. For the convenience of the user the superseded text is set forth as follows:

1652.370 Use of the matrix.

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FEHBP CLAUSE MATRIX

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.202–1	FAR 2.2	Definitions	M	T	T
FAR 52.203–1	FAR 3.102–2	Officials Not to Benefit	M	T	T
FAR 52.203–3	FAR 3.202	Gratuities	M	T	T
FAR 52.203–5	FAR 3.404(c)	Covenant Against Contingent Fees.	M	T	T
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M	T	T
FAR 52.203–9	FAR 3.104–10(b)	Requirement for Certificate of Procurement Integrity—Modification.	M	T	T
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203–70	1603–703	Misleading, Deceptive, or Unfair Advertising.	M	T	T
1652.204–70	1604.705	Contractor Records Retention.	M	T	T
1652.204–71	1604.7001	Coordination of Benefits	M	T	T
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215–1	FAR 15.106–1(b)	Examination of Records by Comptroller General.	M	T	T
FAR 52.215–2	FAR 15.106–2(b)	Audit-Negotiation	M	T	T
FAR 52.215–22	FAR 15.804–8(a)	Price Reduction for Defective Cost or Pricing Data.	M	T	
FAR 52.215–23	FAR 15.804–8(b)	Price Reduction for Defective Cost or Pricing Data–Modifications.	M		T
FAR 52.215–24	FAR 15.804–8(c)	Subcontractor Cost or Pricing Data.	M	T	
FAR 52.215–25	FAR 15.804–8(d)	Subcontractor Cost or Pricing Data–Modifications.	M		T
FAR 52.215–27	FAR 15.804–8(e)	Termination of Defined Benefit Pension Plans.	M	T	T
FAR 52.215–30	FAR 15.904	Facilities Capital Cost of Money.	M	T	
FAR 52.215–31	FAR 15.904	Waiver of Facilities Capital Cost of Money.	A	T	
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).	M	T	T
1652.215–70	1615.804–72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215–71	1615.805–71	Investment Income	M	T	
1652.216–70	1616.270	Accounting and Price Adjustment.	M		T
1652.216–71	1616.271	Accounting and Allowable Cost.	M	T	

FEHBP CLAUSE MATRIX—Continued

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.219–8	FAR 19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	M	T	T
FAR 52.219–13	FAR 19.902	Utilization of Women-Owned Small Businesses.	M	T	T
FAR 52.220–3	FAR 20.302(a)	Utilization of Labor Surplus Area Concerns.	M	T	T
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes.	M	T	T
FAR 52.222–3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222–4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act–Overtime Compensation–General.	M	T	T
FAR 52.222–26	FAR 22.810(e)	Equal Opportunity	M	T	T
FAR 52.222–28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts.	M	T	T
FAR 52.222–29	FAR 22.810(h)	Notification of Visa Denial	A	T	T
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	T	T
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers.	M	T	T
1652.222–70	1622.103–70	Notice of Significant Events	M	T	T
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223–6	FAR 23.505(c)	Drug-Free Workplace	A	T	T
1652.224–70	1624.104	Confidentiality of Records	M	T	T
FAR 52.229–3	FAR 29.401–3	Federal, State and Local Taxes.	M		T
FAR 52.229–4	FAR 29.401–4	Federal, State and Local Taxes (Noncompetitive Contract).	M	T	
FAR 52.229–5	FAR 29.401–5	Taxes–Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
FAR 52.229–6	FAR 29.402–1(a)	Taxes–Foreign Fixed Price Contracts.	A	T	T
FAR 52.230–2	FAR 30.201–4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230–3	FAR 30.201–4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230–5	FAR 30.201–4(d)(1)	Administration of Cost Accounting Standards.	A	T	T
FAR 52.232–8	FAR 32.111(c)(1)	Discounts for Prompt Payment.	M	T	T
FAR 52.232–17	FAR 32.617(a) Modification: 1632.617.	Interest	M		T
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
1652.232–70	1632.171	Payments—contracts without letter of credit payment arrangements.	A	T	T
1652.232–71	1632.172	Payments—contracts with letter of credit payment arrangements.	A	T	T
1652.232–72	1632.772	Non-Commingling of FEHBP Funds.	M	T	
1652.232–73	1632.806–70	Approval for Assignment of Claims.	M	T	T
FAR 52.233–1	FAR 33.214	Disputes	M	T	T
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs.	M	T	
FAR 52.242–13	FAR 42.903	Bankruptcy	M	T	T
FAR 52.249–2	FAR 49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price).	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.249–8	FAR 49.504(a)(1)	Default (Fixed-Price Supply and Service).	M	T	T
FAR 52.243–1	FAR 43.205(a)(1)	Changes—Fixed Price—Alternate I.	M	T	T
1652.244–70	1644.270	Subcontracts	M	T	T
FAR 52.244–5	FAR 44.204(e)	Competition in Subcontracting.	M	T	T
FAR 52.245–2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts).	M	T	T
FAR 52.246–25	FAR 46.805(a)(4)	Limitation of Liability–Services.	M	T	
1652.246–70	1646.301	FEHBP Inspection	M	T	T
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers.	M	T	T
1652.249–70	1649.101–70	Renewal and Withdrawal of Approval.	M	T	T
FAR 52.251–1	FAR 51.107	Government Supply Sources.	A	T	
FAR 52.252–2	FAR 52.107(b)	Clauses Incorporated by Reference.	M	T	T
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	M	T	T
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses.	M	T	T

PART 1653—FORMS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

1653.000 FEHBP forms.

The following forms specified in FAR subparts 53.2 and 53.3 are applicable to FEHBP acquisitions:

Part 53.2	Part 53.3	Form title
53.201–1	53.301–1402	SF 1402–Certificate of Appointment.
53.203	53.301–119	SF 119—Statement of Contingent or Other Fees.
53.204–2(a)	53.301–279	SF 279 FPDS—Individual Contract Action Report (over $10,000).
53.204–2(b)	53.301–281	SF 281 FPDS—Summary of Contract Actions of $10,000 or less.
53.229	53.301–1094	SF 1094—U.S. Tax Exemption Certificate.
53.229	53.301–1094A	SF 1094A—Tax Exemption Certificates Accountability Record.

[52 FR 16048, May 1, 1987, as amended at 62 FR 47583. Sept. 10, 1997]

EFFECTIVE DATE NOTE: At 62 FR 47578, Sept. 10, 1997, part 1653 was amended by removing all references to 53.215–2(b), 53.301–1412, and SF–1412 in the chart, effective Oct. 10, 1997.

CHAPTER 17—OFFICE OF PERSONNEL MANAGEMENT

(Parts 1700 to 1799)

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PART 1733—PROTESTS, DISPUTES, AND APPEALS

Subpart 1733.2—Disputes and Appeals

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1733.203–70 Designation of the Interior Board of Contract Appeals to decide OPM appeals.
1733 209 Suspected fraudulent claims.
1733.211 Contracting officer's decision.
1733.212 Contracting officer's duties upon appeal.
1733.214 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 51 FR 44296, Dec. 9, 1986, unless otherwise noted.

Subpart 1733.2—Disputes and Appeals

1733.203 Applicability.

(a) The Office of Personnel Management's (OPM) procurement executive shall make the determination prescribed under FAR 33.203(b).

(b) Requests for determinations under paragraph (a) of this section shall be submitted by OPM's contracting officer through OPM's head of the contracting activity to the procurement executive for further action.

1733.203–70 Designation of the Interior Board of Contract Appeals to decide OPM appeals.

(a) The Interior Board of Contract Appeals (IBCA) has been designated by the Director of OPM to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by OPM. This delegation governs disputes between OPM and its prime contractors and does not encompass any claim made by a third party beneficiary of, or by a subscriber to, a Federal employee insurance program.

(b) The address of IBCA is 4015 Wilson Boulevard, Arlington, VA 22203.

(c) IBCA rules of procedure can be found in 43 CFR part 4.

1733.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter through the head of the contracting activity to OPM's Offices of the Inspector General and the General Counsel.

1733.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Interior Board of Contract Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, and its procedures under 43 CFR part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by the FAR.

1733.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to IBCA by certified mail within 5 days of receipt. OPM's Office of the General Counsel and the Department of the Interior's (DOI) Office of the Solicitor shall also be notified of the appeal by the contracting officer. 43 CFR 4.103.

(b) The contracting officer shall prepare and transmit the documentation and information required by 43 CFR 4.104 in the form of an appeal file to IBCA, OPM's Office of the General Counsel, DOI's Office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by IBCA.

1733.214 Contract clause.

The Disputes clause contained in FAR 52.233–1 shall be used with its Alternate I in all OPM solicitations and contracts.

CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

(Parts 1800 to 1899)

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EDITORIAL NOTE: Nomenclature changes to Chapter 18 appear at 58 FR 51136, Sept. 30, 1993.

SUBCHAPTER A—GENERAL

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

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Subpart 1801.7—Determinations and Findings

1801.707 Signatory authority.
1801.770 Legal review.

Authority: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40534, Aug. 5, 1996, unless otherwise noted.

1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulations (FAR) Supplement, also referred to as the NFS.

Subpart 1801.1—Purpose, Authority, Issuance

1801.103 Authority. (NASA supplements paragraph (a))

(a) Under the following authorities, the Administrator has delegated to the Associate Administrator for Procurement authority to prepare, issue, and maintain the NFS:

(i) The National Aeronautics and Space Act of 1958 (Public Law 85–568; 42 U.S.C. 2451 et seq.).

(ii) 10 U.S.C. chapter 137.

(iii) Other statutory authority.

(iv) FAR subpart 1.3.

1801.104 Applicability.

The NFS applies to all acquisitions as defined in FAR Part 2 except those expressly excluded by the FAR or this chapter.

1801.105 Issuance.

1801.105–1 Publication and code arrangement. (NASA supplements paragraphs (a) and (b))

(a)(i) The NFS is published in the same publications and formats as the FAR.

(ii) The NFS is published in ''editions'' and ''versions.'' An ''edition'' is a loose-leaf publication of the entire regulation and is denoted by the calendar year of publication. A ''version'' is the basic loose-leaf edition NFS with all NFS Directive (NFSD) change pages filed up to and including the NFSD number that corresponds to the ''version'' number. For example, for the 1989 edition of the NFS, Version 89.3 consists of pages from NFSD 89–0 (basic NFS), with change pages filed from NFSDs 89–1, 89–2, and 89–3.

(b) The NFS is issued as chapter 18 of title 48, Code of Federal Regulations (CFR).

1801.105–2 Arrangement of regulations. (NASA supplements paragraph (b))

(b)(1)(A) Numbering of NFS text implementing the FAR shall be the same as that of the related FAR text, except when the NFS coverage exceeds one paragraph. In such case the NFS text is numbered by skipping a unit in the FAR 1.105–2(b)(2) prescribed numbering sequence. For example, two paragraphs implementing FAR 1.105–2(b)(1) are numbered 1801.105–2(b)(1) (A) and (B), rather than (1) (i) and (ii). Further subdivision of the NFS implementing paragraphs would follow the prescribed sequence in FAR 1.105(b)(2).

(B) NFS text that supplements the FAR is numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105–3 is numbered 1801.105–370. Supplemental text exceeding one paragraph is numbered using the FAR 1.105–2(b)(2) prescribed numbering sequence without skipping a unit.

(2) Subdivision numbering below the fourth level repeats the numbering sequence using italicized letters and numbers.

1801.105–3 Copies (NASA paragraphs (1), (2) and (3)).

(1) Subscriptions to the NFS may be obtained by writing to Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, or by calling (202) 512–1800. All requests should cite the NFS GPO Subscription Stock No. 933–003–00000–1. A subscription consists of the basic edition, plus all changes issued for an indefinite period. The prices and periods of subscriptions are set by GPO.

(2) The NFS is also available on the Internet (address: http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm).

(3) Copies of NASA Handbooks (NHBs), NASA Management Instructions (NMIs), NASA Policy Directives (NPDs), and NASA Procedures and Guidelines (NPGs) may be obtained from NASA Headquarters, Office of Management Systems and Facilities (Code JM).

1801.105–370 Internal dissemination.

The Headquarters Office of Procurement (Code HK), (202–358–1248), distributes the FAR, Federal Acquisition Circulars (FACs), the NFS, NFSDs, Procurement Notices (PNs), and Procurement Information Circulars (PICs) directly to NASA Headquarters offices and installation distribution points. NASA center personnel may be placed on the distribution list or may obtain extra copies by contacting the designated distribution point for their installation.

1801.106 OMB approval under the Paperwork Reduction Act. (NASA paragraphs (1) and (2))

(1) *NFS requirements.* The following OMB control numbers apply:

NFS segment	OMB control No.
1815.406–70(b)(5)(iii)	2700–0082
1815.608–72	2700–0080
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1843	2700–0054
NF 533	2700–0003
NF 667	2700–0004
NF 1018	2700–0017

(2) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (1) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700–0086 (acquisitions up to $25,000), 2700–0087 (solicitations that may result in bids or proposals not exceeding $500,000), 2700–0085 (solicitations that may result in bids or proposals exceeding $500,000), 2700–0088 (contracts not exceeding $500,000), and 2700–0089 (contracts exceeding $500,000).

Subpart 1801.2—Aministration

1801.270 Amendment of regulation.

1801.270–1 Revisions.

The NFS is amended by publishing amendments in the FEDERAL REGISTER and issuing NFSDs containing loose-

leaf replacement pages revising various segments of it (also see 1801.270–2). Each replacement page bears the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

1801.270–2 Procurement Notices.

(a) The NFS is amended by publishing amendments in the FEDERAL REGISTER and issuing Procurement Notices (PNs) when it is necessary or advisable to change the NFS in advance of an NFSD.

(b) Unless otherwise indicated, each PN remains in effect until the effective date of the subsequent NFSD incorporating the PN or until specifically canceled.

1801.270–3 Effective date.

(a) Compliance with a revision to the NFS shall be in accordance with the NFSD or PN containing the revision.

(b) Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the acquisition.

1801.270–4 Numbering.

NFSDs and PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NFS.

1801.271 NASA procedures for FAR and NFS changes.

(a) Informal suggestions for improving the NFS, including correction of errors, should be directed to the Headquarters Office of Procurement (Code HK).

(b) (1) Formal requests for changes to the FAR or the NFS should be written and contain

(i) A description of the problem the suggested revision is designed to cure,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to Code HK. Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

1801.272 Procurement Information Circulars.

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. Code HK is responsible for issuing PICs.

(b) PICs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

Subpart 1801.3—Agency Acquisition Regulations

1801.301 Policy. (NASA supplements paragraphs (a) and (b))

(a) (2) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies, procedures, and solicitation and contract provisions and clauses must be forwarded to the Headquarters Office of Procurement (Code HK) for approval in accordance with 1801.271(b).

(b) (i) 41 U.S.C. 418b requires publication of NFS changes for public comment where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors. However, it does not define ‘‘significant effect beyond the internal operating procedures’’ or ‘‘significant cost or administrative impact.’’ Examples of policies or procedures that fall in either of these categories are:

(A) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have

been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(B) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(C) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(D) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(ii) In contrast, the following would not have to be publicized for public comment:

(A) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

(B) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is a part of the specification or statement of work.)

(C) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.303 Publication and codification. (NASA supplements paragraph (a))

(a) Part, subpart, and section numbers 70 through 89 are reserved for NFS supplementary material for which there is no FAR counterpart.

Subpart 1801.4—Deviations From the FAR

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR and the NFS.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the FAR or the NFS shall be submitted by the Procurement Officer to the Headquarters Office of Procurement (Code HS).

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the FAR or the NFS requirement from which a deviation is sought;

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;

(5) Identification of the contractor(s) and the contract(s) affected, including dollar value(s);

(6) Detailed reasons supporting the request, including any pertinent background information; and

(7) A copy of counsel's concurrence or comments.

(c) In addition to the information required by 1801.471(b), requests for individual deviations from FAR cost principles under FAR 31.101 should include a copy of the contractor's request for cost allowance.

Subpart 1801.6—Career Development, Contracting Authority, and Responsibilities

1801.601 General.

The authority to contract for authorized supplies and services is delegated to the Associate Administrator for Procurement and installation officials by NPD 5101.32.

1801.602–3 Ratification of unauthorized commitments. (NASA supplements paragraphs (b) and (c))

(b) Policy. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(c)(7) The authority in FAR 1.602–3 may be exercised only when—

(A) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301.

(B) The procurement request and/or accompanying documentation identifies the individual who made the unauthorized commitment, and includes a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the firm was selected, lists other sources considered, describes the work, and estimates or states the agreed price. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

(C) The procurement request is submitted through the director of the cognizant program office at the contracting activity, or comparable official. In the procurement request, the director shall describe measures taken to prevent the recurrence of the unauthorized commitment.

1801.603 Selection, appointment, and termination of appointment.

1801.603–2 Selection.

Normally, only GS–1102 and –1105 personnel with the proper training and experience may be appointed contracting officers and only when a valid organizational need can be demonstrated.

1801.670 Delegations to contracting officer's technical representatives (COTRs).

A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COTR designation or by any means other than a contracting officer warrant.

Subpart 1801.7—Determinations and Findings

1801.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR or the NFS text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Associate Administrator for Procurement or by a contracting officer.

1801.770 Legal review.

Each D&F, including class D&Fs, shall be reviewed by counsel for form and legality before signature by the approving authority.

PART 1802—DEFINITIONS OF WORDS AND TERMS

Sec.
1802.000 Scope of part.

Subpart 1802.1—Definitions

1802.101 Definitions.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

1802.000 Scope of part.

Commonly used words and terms are defined in FAR subpart 2.1. This part 1802 gives NASA-specific meanings for some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

Subpart 1802.1—Definitions

1802.101 Definitions.

Administrator means the Administrator or Deputy Administrator of NASA.

Contracting activity in NASA includes the NASA Headquarters installation and the following field installations: Ames Research Center, Dryden Flight Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, Marshall Space Flight Center, Space Station Program Office and Stennis Space Center.

Head of the agency or *agency head* means the Administrator or Deputy Administrator of NASA.

Head of the contracting activity means, for field installations, the Director or other head and, for NASA Headquarters, the Associate Administrator for Headquarters Operations.

Procurement officer means the chief of the contracting office, as defined in FAR 2.101.

Senior Procurement Executive means the Associate Administrator or Deputy Associate Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1803.1—Safeguards

Sec.
1803.101 Standards of conduct.
1803.101–1 General.
1803.101–2 Solicitation and acceptance of gratuities by Government personnel.
1803.104 Procurement integrity.
1803.104–3 Definitions.
1803.104–5 Disclosure, protection, and marking of proprietary and source selection information. (NASA supplements paragraphs (a) and (c))
1803.104–10 Violations or possible violations. (NASA supplements paragraphs (a), (b) and (f))

Subpart 1803.2—Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.
1803.705 Procedures.

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy.
1803.806 Processing suspected violations.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101–1 General.

The statutory prohibitions and their application to NASA personnel are discussed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration, 5 CFR part 6901. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

[61 FR 40537, Aug. 5, 1996, as amended at 62 FR 14016, Mar. 25, 1997]

1803.101–2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General.

[61 FR 40537, Aug. 5, 1996, as amended at 62 FR 14016, Mar. 25, 1997]

1803.104 Procurement integrity.

[62 FR 36704, July 9, 1997]

1803.104–3 Definitions.

Agency ethics official means for Headquarters, the General Counsel and the Associate General Counsel for General

Law, and for each center, the Chief Counsel.

[62 FR 36704, July 9, 1997]

1803.104–5 Disclosure, protection, and marking of proprietary and source selection information. (NASA supplements paragraphs (a) and (c))

(a) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(i) Personnel participating in source evaluation board (SEB) procedures (see 1815.612.70) or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures and personnel evaluating protests.

(ii) Personnel assigned to the contracting office.

(iii) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(iv) Small business specialists.

(v) Personnel assigned to counsel's office.

(vi) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(vii) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in Subpart 1807.71.

(viii) Other Government employees authorized by the contracting officer.

(ix) Supervisors, at any level, of the personnel listed in paragraphs 1803.104–5(a) (i) through (viii).

(x) Duly designated ombudsman.

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing source selection information as defined in FAR 3.104–3 shall assure that the material is marked with the legend in FAR 3.104–5(c) at the time the material is prepared.

(ii) Unless marked with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104,'' draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in order to determine the capabilities of potential competitive sources (see FAR Subpart 7.1). All documents, once released, must remain available to the public until the conclusion of the acquisition.

[62 FR 36704, July 9, 1997]

1803.104–10 Violations or possible violations. (NASA supplements paragraphs (a), (b) and (f))

(a)(1) The Procurement Officer is the individual designated to receive the contracting officer's report of violations.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Associate Administrator for Procurement (Code HS).

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Associate Administrator for Procurement (Code HS) simultaneous with transmittal to the Administrator.

[62 FR 36704, July 9, 1997]

Subpart 1803.2—Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

Any suspected violations of the clause at FAR 52.203–3, Gratuities, shall be reported to the installation's Office of Inspector General.

Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations. (NASA supplements paragraphs (b) and (d))

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HS). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

(A) The noncompetitive pattern or situation under consideration;

(B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(C) Community of financial interest among offerors, insofar as it is known;

(D) The extent, if any, to which specification requirements or patents restrict competition;

(E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of he General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HS). The report shall include the reasons for suspecting collusion. Code HS shall forward a copy to the NASA Office of the Inspector General.

Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with 1809.470.

Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

The Associate Administrator for Procurement has been delegated the authority to authorize an exception to the policy in FAR 3.601. The Associate Administrator for Procurement has redelegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of $100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Associate Administrator for Procurement (Code HS) for approval.

Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy. (NASA supplements paragraph (a))

(a) The Associate Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201–224 (Bribery, Graft and Conflicts of Interest) relating to them.

1803.705 Procedures.

Procurement officers shall make reports to the Associate Administrator for Procurement (Code HS). The Associate Administrator for Procurement is responsible for the actions, notices, and decisions required by FAR 3.705(c), (d), and (e).

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy

Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF–LLL) furnished pursuant to FAR 3.803 to the Office of Procurement (Code HS). The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for the six-month period ending March 31st, and by October 15th for the period ending September 30th.

1803.806 Processing suspected violations.

The Associate Administrator for Procurement (Code HS) is the designated official to whom suspected violations of the Act shall be referred.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.1—Contract Executive

Sec.
1804.103 Contract clause.
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1804.670 Individual Procurement Action Report (NASA Form 507 series).
1804.670–1 Applicability and coverage.
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1804.671 Committee on Academic Science and Engineering (C.A.S.E.) Report.

Subpart 1804.8—Government Contract Files

1804.802–70 Handling of classified material.
1804.803 Contents of contract files.
1804.803–70 Checklist.
1804.804 Closeout of contract files.
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Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.
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Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.
1804.7101 Policy.
1804.7102 Prefixes.
1804.7103 Serial numbers.
1804.7104 Modifications of contracts or agreements.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Contract review by Headquarters.

Subpart 1804.73—Procurement Requests

1804.7301 General.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40539, Aug. 5, 1996, unless otherwise noted.

Subpart 1804.1—Contract Execution

1804.103 Contract clause.

The contracting officer shall include the clause at FAR 52.204–1, Approval of Contract, in solicitations, contracts,

and supplemental agreements that require higher level approval. For actions requiring Headquarters approval, insert ''NASA Associate Administrator for Procurement'' in the clause's blank space.

1804.170 Contract effective date.

(a) *Contract effective date* means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205–32) and the clause prescribed at 1831.205–70 is used.

Subpart 1804.2—Contract Distribution

1804.202 Agency distribution requirements

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for Aero-Space Information (CASI), Attention: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934.

Subpart 1804.4—Safeguarding Classified Information Within Industry

1804.402 General. (NASA supplements paragraph (b))

(b) NASA industrial security policies and procedures are prescribed in NMI 1600.2, NASA Security Program. (See also 1842.202–72).

1804.404–70 Contract clause.

The contracting officer shall insert the clause at 1852.204–75, Security Classification Requirements, in solicitations and contracts if work is to be performed will require security clearances. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular acquisition and installation.

1804.470 Security requirements for unclassified automated information resources.

1804.470–1 Scope.

This section implements the acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources.

1804.470–2 Policy.

NASA policies and procedures on automated information security are prescribed in NMI 2410.7, Assuring the Security and Integrity of NASA Automated Information Resources, and in NHB 2410.9, NASA Automated Information Security Handbook, Chapters 3 and 4. Security requirements for safeguarding sensitive information in unclassified Federal computer systems are required in:

(a) Contracts for automatic data processing equipment, software, the management or operation of Data Processing Installations (DPIs) or related services; and

(b) Contracts under which contractor personnel must have physical or electronic access to sensitive automated information, or automated information that supports mission-critical functions.

1804.470–3 Security Plan for Unclassified Federal Information Technology Systems.

When considered appropriate for contract performance, the contracting officer, with the concurrence of the requiring activity and the center automated information security (AIS) manager, may require the contractor to submit for post-award Government approval a detailed Security Plan for Unclassified Federal Information Technology Systems. The plan shall be required as a contract data deliverable that will be subsequently incorporated into the contract as a compliance document after Government approval. The plan shall demonstrate thorough understanding of NMI 2410.7 and NHB

2410.9, and shall include, as a minimum, the security measures and program safeguards to ensure that the information technology resources acquired and used by contractor and subcontractor personnel:

(a) Operate effectively and accurately;

(b) Are protected from unauthorized alteration, disclosure, or misuse of information processed, stored, or transmitted;

(c) Can maintain the continuity of automated information support for Government missions, programs, and functions;

(d) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the system's integrity and accuracy; and

(e) Have appropriate technical, personnel, administrative, environmental, and access safeguards.

[62 FR 36705, July 9, 1997]

1804.470–4 Contract clauses.

The contracting officer shall insert the clause substantially as stated at 1852.204–76, Security Requirements for Unclassified Automated Information Resources, in solicitations and contracts involving unclassified automated information resources. Paragraph (a) of the clause shall be completed with information supplied by the cognizant requiring activity.

[61 FR 40539, Aug. 5, 1996. Redesignated at 62 FR 36705, July 9, 1997]

Subpart 1804.6—Contract Reporting

1804.601 Record requirements.

The Headquarters Office of Procurement (Code HC) is responsible for meeting the requirements of FAR 4.601, based on installation submission of Individual Procurement Action Reports (NASA Form 507 series) data.

1804.602 Federal Procurement Data System. (NASA supplements paragraph (d))

(d) Code HC is responsible for requesting, obtaining, and reporting Contractor Establishment Codes to the FPDS.

1804.670 Individual Procurement Action Report (NASA Form 507 series).

The Individual Procurement Action Report and Supplements (NASA Form 507 series) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to Congress, Federal Procurement Data Center, and other Federal agencies. The preparation and utilization of the NASA Form 507 series are integral parts of the agencywide Financial and Contractual Status (FACS) system.

§ 1804.670–1 Applicability and coverage.

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.* (1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and funded Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial value is more than $25,000.

(4) All purchase orders for advisory and assistance services.

(5) Purchase orders of $25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for FPDS reports.)

(b) *Modifications.* Modifications that

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported.

1804.670–2 Submission due date.

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of business on the fifth work day following each month being reported. The installation procurement officer should establish an

agreement with the installation financial officer on a cut-off date for processing contractual documents to ensure that the FACS procurement submission and the FACS financial submission for the month include the same contracts.

1804.670–3 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).

(a) The information required by the following forms shall be provided when submitting individual Procurement Action Reports:

(1) New contract awards—NASA Forms 507, 507A, and 507B.

(2) New grants, cooperative agreements, funded Space Act agreements, intragovernmental agreements, and orders against federal supply schedules—NASA Forms 507G and 507B.

(3) Modifications to any procurement action—NASA Forms 507M and, if necessary, 507B.

(b) The NASA Forms 507 series shall be prepared in accordance with instructions issued by Code HC. These instructions will be issued and updated through Procurement Information Circulars (PICs).

1804.671 Committee on Academic Science and Engineering (C.A.S.E.) Report.

NASA Form 1356, C.A.S.E. Report on College and University Projects, shall be prepared for awards to nonprofit institutions of higher education or to nonprofit institutions that are operationally affiliated or integrated with an educational institution. Information on this form is used to produce reports required by the National Science Foundation and to respond to inquiries. Submission is required regardless of instrument type (contract, grant, cooperative agreement, or funded Space Act agreement) and type of proposal (solicited or unsolicited). Instructions appear on the form itself and constitute the detailed guidance for preparation and submission. The form, which is either included with the acquisition package or initiated by the contracting office, shall be completed, reviewed, and promptly forwarded upon award to the Headquarters Office of Human Resources and Education (Code FET).

Subpart 1804.8—Government Contract Files

1804.802–70 Handling of classified material.

When a contract is unclassified, classified material relating to that contract shall be maintained in a separate file folder and container, and the unclassified folder shall be marked to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any document in the folder.

1804.803 Contents of contract files.

1804.803–70 Checklist.

NASA Form 1098, Checklist for Contract Award File Content, shall be used as the ''top page'' in contract files.

1804.804 Closeout of contract files.

1804.804–2 Closeout of the contracting office files if another office administers the contract. (NASA supplements paragraph (b))

(b) Upon receiving the NASA Form 1611 or DD Form 1594, Contract Completion Statement, from the contract administration office and complying with FAR 4.804–2(b), the contracting officer shall complete the form.

1804.804–5 Detailed procedures for closing out contract files. (NASA supplements paragraphs (a) and (b))

(a) When the contracting office retains contract administration (excluding acquisitions under the simplified acquisition threshold), the contracting officer shall comply with FAR 4.804–5(a) by completing NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record.

(b) To comply with FAR 4.804–5(b), the contracting officer shall complete NASA Form 1611 or DD Form 1594, Contract Completion Statement, except for acquisitions under the simplified acquisition threshold.

1804.805 Storage, handling, and disposal of contract files. (NASA supplements paragraph (a))

(a) See NHB 1441.1, NASA Records Disposition Handbook.

1804.805–70 Review, separation, and retirement of contract files.

(a) Upon determination of contract completion under the procedures outlined in 1804.804, each office shall remove the official contract files from the active file series, mark each file folder with ''Completed (Date)'', and place the folder in a completed (inactive) contract file series. Separate series should be established for contracts of $25,000 or less and for contracts of more than $25,000, to facilitate later disposal. Any original or official file copies of documents contained in duplicate or ''working'' contract files shall be removed and placed in the appropriate official file; any remaining material in the duplicate or ''working'' file shall be destroyed immediately or segregated and marked for early disposal.

(b) Each office shall review contractor ''general'' files (i.e., a file containing documents relating generally to a contractor rather than a specific contract) at least once annually and remove documents that—

(1) Are obsolete or superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of a contractor's current or future capability, performance, or programs, and documents relating to a contractor that is no longer a possible source of supplies, services, or technical assistance) and dispose of the documents as authorized in 1804.805; or

(2) Pertain only to completed contracts. Place those files that are not routine in nature in inactive files for later disposal, and immediately dispose of routine documents as authorized in NHB 1441.1, NASA Records Disposition Handbook.

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7000 Scope of subpart.

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

1804.7001 Definition.

Transfer of a contract, as used in this subpart, means that process whereby a contract and all future responsibility for a contract held by one installation are transferred or reassigned in writing to another installation.

1804.7002 Approval of transfer requests.

(a) The approval authority for requests to transfer a contract is the official in charge of the cognizant Headquarters program office or designee. Requests for approval shall be submitted by the director of the transferring installation after receiving the concurrence of the director of the receiving installation. Concurrence of the Associate Deputy Administrator (Code AI) is also required for a transfer where an installation's roles and missions may be affected.

(b) Approval of a program transfer by the cognizant Headquarters official constitutes approval to transfer program-related contracts.

1804.7003 Responsibilities of the contracting officer of the transferring installation.

1804.7003–1 Coordinations.

The contracting officer of the transferring installation shall take the following steps before transferring the contract:

(a) Agree on a plan and schedule with the contracting officer of the receiving installation for transferring contract responsibility and contract files.

(b) Coordinate with the following offices:

(1) Financial Management Office, to determine the contract financial

records to be transferred and the method, timing, and dollar amount of such transfers.

(2) Technical (Engineering and Project) Office, to determine the status of any outstanding engineering changes.

(3) Reliability and Quality Assurance Office, to determine status and method of transferring the reliability and quality assurance functions.

(4) Industrial Property and Facilities Office, to determine the method of transferring the Government property records.

(5) Transportation Office, to determine the status of bills of lading furnished the contractor.

(6) Security Office, to determine whether any classified material is outstanding and whether special precautions are necessary during the transfer process.

(7) Other organizational elements, to determine the status of any other actions such as new technology, materials reports, PERT, and safety.

1804.7003–2 File inventory.

The contracting officer of the transferring installation shall prepare an inventory of the contract file. This inventory shall also include a separate listing of all outstanding requests for contract administration assistance issued to other Government agencies, indicating the name and address of the agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services yet to be performed for each requested function. Copies of this inventory shall be provided to the contracting officer of the receiving installation.

1804.7003–3 Notifications.

The contracting officer of the transferring installation shall provide written notification of the planned transfer to the contractor and all agencies performing or requested to perform administration services.

1804.7003–4 Transfer.

(a) Upon completion of the actions described in 1804.7003–1 through 1804.7003–3, the contracting officer of the transferring installation shall issue a letter to the contractor, agencies performing contract administration functions, contracting officer representatives, and the contracting officer of the receiving installation. This letter shall provide notification of the transfer date, termination of appointment of the contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer of the receiving installation.

(b) After issuing the letters described in 1804.7003–4(a), the contracting officer of the transferring installation shall send the contract file to the contracting officer of the receiving installation with a letter transferring contract responsibility. This letter shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer of the receiving installation.

1804.7003–5 Retention documentation.

The contracting officer of the transferring installation shall retain for permanent file a copy of the approvals and concurrences required by 1804.7002, the transfer acceptance letter of the contracting officer of the receiving installation, and any additional documents necessary for a complete summary of the transfer action.

1804.7004 Responsibilities of the contracting officer of the receiving installation.

1804.7004–1 Pre-transfer file review.

The contracting officer of the receiving installation shall review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, before the official transfer of the contract. This review may be waived by written notification to the contracting officer of the transferring installation.

1804.7004–2 Post-transfer actions.

The contracting officer of the receiving installation shall—

(a) Provide the contracting officer of the transferring installation written acceptance of contract responsibility and receipt of the contract files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's technical representatives, as necessary;

(d) Issue a contract modification to provide for the administrative changes resulting from the transfer action (e.g., identifying offices responsible for performing contract administration and making payment and the office to which vouchers, reports, and data are to be submitted);

(e) Provide copies of the contract documents to affected installation offices; and

(f) If appropriate, supplement the letter of request to the Government agency providing contract administration services to reflect the changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

Subpart 1804.71—Uniform Acquisition Instrument Identification

1804.7100 Scope of subpart.

This subpart contains the procedures for uniform numbering of NASA solicitations, contracts (including letter contracts), purchase orders (including requests to other Government agencies), basic ordering agreements, other agreements between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements to these instruments.

1804.7101 Policy.

(a) Contractual documents shall be numbered with approved prefixes and serial numbers as prescribed in this subpart. If other identification is required for center purposes, it shall be placed on the document in such a location as to clearly separate it from the identification number.

(b) The identification number shall consist of not more than 11 alphanumeric characters positioned as prescribed in this subpart and shall be retained unchanged for the life of the particular instrument.

1804.7102 Prefixes.

(a) Approved prefixes are as follows:

Installation	Contract prefix	Purchase order prefix
Ames Research Center	NAS 2	A
Dryden Flight Research Center	NAS 4	E
Goddard Space Flight Center	NAS 5	S
Headquarters	NASW	W
Lyndon B. Johnson Space Center.	NAS 9	T
John F. Kennedy Space Center	NAS10	CC
Langley Research Center	NAS 1	L
Lewis Research Center	NAS 3	C
George C. Marshall Space Flight Center.	NAS 8	H
NASA Management Office-JPL	NAS 7	WO
John C. Stennis Space Center	NAS13	NS
Space Station Program Office	NAS15	K

(b) The contract prefix shall be used for the following documents:

(1) Contracts, including letter contracts, indefinite-delivery contracts, utilities, leases of real property and renewals.

(2) Easements.

(3) Basic ordering agreements.

(4) Other written agreements involving payment or receipt of funds not covered by 1804.7102(e).

(c) Contracts totally funded under reimbursable arrangements with the department of Energy shall use a DEN prefix instead of the NAS prefix (e.g., DEN 8 for Marshall).

(d) Space Act agreements awarded under the authority of Section 203(c)(5) or 203(c)(6) of the Space Act shall use an NCA prefix instead of the NAS prefix (e.g., NCA 8 for Marshall).

(e) The purchase order prefix shall be used for purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services.

(f) Solicitations shall be numbered in accordance with installation procedures, except that in all cases the identifying number shall begin with the portion of the installation's contract prefix following ''NAS.''

(g) If a prefix is required for an installation or office not listed in this section, a request for a prefix assignment shall be submitted to the Headquarters Office of Procurement (Code HC).

1804.7103 Serial numbers.

(a) Installations shall number contracts and agreements identified in 1804.7102(b) serially by fiscal year. The

serial number shall be five digits beginning with a two-digit fiscal year identifier followed by a three digits commencing with ''001'' and continuing in succession. For example, the first contracts awarded by Ames Research Center in fiscal year 1997 shall be numbered NAS 2 97001 and NAS 2 97002. Fiscal year identification is optional for Space Act agreements.

(b) Serial number for purchase orders shall be assigned serially without fiscal year identification. When the series of numbers exceeds five digits (over 99,999), a new series shall be used, beginning the series with number ''1'' and followed by the capital letter ''A.'' Should additional series become necessary, they will be distinguished by the capital letters ''B,'' ''C,'' and so forth, as may be required, except that the letters ''I'' and ''O'' shall not be used.

1804.7104 Modifications of contracts or agreements.

(a) Modifications of definitive or letter contracts or agreements shall (1) bear the same identification as the contract or agreement being modified and (2) be numbered consecutively for each contract or agreement, beginning with Modification Number 1, regardless of whether the modification is accomplished by unilateral or bilateral action. Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

(b) Definitive contracts superseding letter contracts shall retain the same contract number as that originally assigned to the letter contract. Actions definitizing letter contracts are considered modifications and shall be assigned modification numbers in accordance with paragraph (a) of this section.

Subpart 1804.72—Review and Approval of Contractual Instruments

1804.7200 Contact review by Headquarters.

(a) Requests for approval of contracts and supplemental agreements by the Associate Administrator for Procurement shall be submitted to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 15 days for review.

(b) Each request for approval shall be accompanied by (1) five copies of the contractual document, one of which has been executed by the contractor and contracting officer, and (2) the official contract file containing the appropriate documentation as set forth in FAR 4.803(a). However, for the items specified in FAR 4.803(a) (10), (11), and (12), the contracting officer shall provide documentation pertaining only to the successful offeror; and, in lieu of the items specified in FAR 4.803(a)(26) (ii) and (iii), the contracting officer shall provide an index briefly describing the content of all previous modifications.

(c) The approval required under this section shall be made by signature of the Associate Administrator for Procurement on the contract/supplemental agreement.

Subpart 1804.73—Procurement Requests

1804.7301 General.

Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the approved procurement request certifying that funds are available when—

(a) Such action is necessary to meet critical program schedules;

(b) Program authority has been issued and funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(c) The procurement officer authorizes such action in writing before solicitation issuance.

(d) The solicitation includes the clause at FAR 52.232–18, Availability of Funds. The clause shall be deleted from the resultant contract.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 1805—PUBLICIZING CONTRACT ACTIONS

Subpart 1805.1—Dissemination of Information

Sec.
1805.101 Methods of disseminating information.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General.
1805.205 Special situations.
1805.207 Preparation and transmittal of synopses.
1805.207–70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards.
1805.303–70 NASA Headquarters public announcement.
1805.303–71 Administrator's notice of significant contract actions (ANOSCAs).

Subpart 1805.4—Release of Information

1805.402 General public.
1805.403 Requests from Members of Congress.

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40543, Aug. 5, 1996, unless otherwise noted.

Subpart 1805.1—Dissemination of Information

1805.101 Methods of disseminating information. (NASA supplements paragraph (b))

(b)(4) For NASA policy regarding paid advertisements, see 1805.502.

Subpart 1805.2—Synopses of Proposed Contracts

1805.201 General. (NASA supplements paragraph (a))

(a)(i) Except for acquisitions described in (a)(ii) of this section, a copy of each synopsis shall be made available on the Internet as well as published in the CBD.

(ii) Midrange acquisitions (see part 1871) with annual values of up to $500,000 shall be made available only on the Internet.

1805.205 Special situations. (NASA supplements paragraph (a))

(a) Potential sources responding to R&D advance notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation and, if they do not appear on the solicitation mailing lists established in accordance with FAR 14.205–1, shall be requested to submit Standard Form 129, Solicitation Mailing List Application. Responding sources on established lists may be requested to submit amended applications in order to reflect their current capabilities.

1805.207 Preparation and transmittal of synopses.

1805.207–70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

(a) Architect-engineering services. (1) Each notice publicizing the acquisition of architect-engineer services shall be headed ''C. Architect-Engineer Services.''

(2) In addition to meeting the requirements of FAR 5.207(c), the project description shall—

(i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;

(ii) Describe any specialized qualifications, security classifications, and

limitations on eligibility for consideration;

(iii) Describe qualifications or performance data required from architect-engineer firms; and

(iv) If the acquisition is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

(3) Contracting officers shall add at the end of the synopsis:

See Note 24. Provisions of Note 24 apply to this notice except that (a) in the sentence beginning ''Selection of firms for negotiations,'' the fourth additional consideration listed is changed to read: ''(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry;'' and (b) in the last sentence, ''National Aeronautics and Space Administration'' is substituted for ''Department of Defense.''

(b) Federal Information Processing (FIP) Resources. (1) When total requirement quantities are expected to satisfy the needs of only a single field installation, each notice publicizing the acquisition of FIP resources under an indefinite delivery/idenfinite quantity contract or under a contract that includes options for additional quantities of such resources shall include the following:

The ____ (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: ____ (List other NASA installations and their locations).

(2) When the contemplated contract will authorize orders from locations other than the awarding installation, the notice shall fully describe the ordering scope.

Subpart 1805.3—Synopses of Contract Awards

1805.303 Announcement of contract awards. (NASA supplements paragraph (a))

(a)(i) In lieu of the $3 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of $25 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

(A) For undefinitized contract actions, the not-to-exceed (NTE) or ceiling price value is the face value.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, the estimated amount of the basic contract is the face value. Individual orders up to the face value shall not be announced regardless of value. However, after the face value is reached, any subsequent modifications or orders of $25 million or greater must be announced.

(ii) NASA Headquarters public announcement is also required for award of a contract action with a value of less than $25 million if the contracting officer believes it to have Agency public information implications.

(iii) Contractual instruments requiring Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of their status until the public announcement procedures in 1805.303–70 have been completed.

1805.303–70 NASA Headquarters public announcement.

(a) For those contract actions requiring Headquarters public announcement in accordance with 1805.303, the contracting officer shall furnish a draft news release including the following information, through the installation Public Affairs Office, via facsimile transmission to the Headquarters Office of Public Affairs, News and Imaging Branch (Code PM):

(1) A brief description of the work, including identification of the program and project;

(2) Identification of the contract action as either a new contract or additional work of services under an existing contract;

(3) Contract type. For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The dollar amount authorized for the instant action and the estimated

total cost of the contract if this is different. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) Name and address (including zip code) of the contractor;

(6) Principal work performance locations;

(7) Names and addresses of any unsuccessful offerors.

(b) The information in paragraph (a) of this section shall be provided to Code PM before transmitting a letter contract to a contractor for signature. For actions other than letter contracts, the information should be transmitted to Code PM after contractor signature, if applicable, no later than 48 hours before the planned award.

(c) For contract actions requiring Headquarters approval in accordance with 1804.72, the draft news release required by paragraph (a) of this section shall be provided to the Headquarters Office of Procurement (Code HS) with the request for approval. Code HS will forward the information to Code PM after approval.

(d) Code PM will advise the installation Public Affairs Office of the date public announcement of the contract action will be made. Installations may proceed with award and local release of the information no earlier than 4:00 p.m. ET of the date Code PM makes public announcement. If earlier award is considered appropriate, installations must request authorization from the Associate Administrator for Procurement (Code HS).

1805.303–71 Administrator's notice of significant contract actions (ANOSCAs).

(a) In addition to the public announcement requirements described in 1805.303–70, contracting officers shall notify the Administrator of the following significant actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned contract award for competitive acquisitions of $25 million or more, including all priced options.

(2) Planned contract award of noncompetitive awards and new work modifications of $100 million or more, including all priced options.

(3) Planned award of other actions, to include cooperative agreements resulting from a Cooperative Agreement Notice (CAN), at any dollar value thought to be of significant interest to Headquarters.

(b) To provide notification to the Administrator, the contracting officer shall send the information listed in paragraphs (b) (1) through (10) of this subsection to the Headquarters Office of Procurement (Code HS) via facsimile transmission (202–358–4065). Immediately prior to transmission, the contracting officer shall notify Code HS by telephone (202–358–2080) of the impending transmission. In accordance with FAR 3.104–5(c), the contracting officer shall mark all pages that include source selection information with the legend ''SOURCE SELECTION INFORMATION—SEE FAR 3.104.'' The following information shall be sent:

(1) Title and a brief nontechnical description of the work, including identification of the program or project;

(2) Identification of the contract action as either a new contract or additional supplies or services under an existing contract;

(3) Contract type (including whether a cost contract is completion or level-of-effort). For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The total contract value for the instant action including all priced options. Also include the Government's most probable cost. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) The name, address, and business size status of the prime contractor and each major (over $1M) subcontractor;

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options;

(7) Principal work performance locations;

(8) Brief description of any unusual circumstances;

(9) The names and telephone numbers of the contracting officer and project manager; and

(10) *For competitive selections only,* provide on a separate attachment the names and addresses of all unsuccessful

offerors and a brief explanation of the general basis for the selection.

(c) The field installation shall not proceed with any awards or announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, the field installation shall proceed with the public announcement procedures described in 1805.303–70.

[61 FR 40543, Aug. 5, 1996, as amended at 62 FR 4466, Jan. 30, 1997]

Subpart 1805.4—Release of Information

1805.402 General public. (NASA paragraphs (1) and (2)

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, the following information on NASA acquisitions may be released:

(i) The names of firms invited to submit offers, and

(iii) The names of firms that attended any pre-bid or pre-proposal conferences.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

[62 FR 14016, Mar. 25, 1997]

1805.403 Requests from Members of Congress. (NASA supplements paragraph (a))

(a) All proposed replies to congressional inquiries shall be prepared and forwarded, with full documentation, to the Headquarters Office of Legislative Affairs (Code L) for approval and release.

Subpart 1805.5—Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes (except CBD announcements) is not authorized in NASA.

PART 1806—COMPETITION REQUIREMENTS

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

Sec.
1806.202 Establishing or maintaining alternative sources.
1806.202–70 Formats.

Subpart 1806.3—Other Than Full and Open Competition

1806.302 Circumstances permitting other than full and open competition.
1806.302–4 International agreement.
1806.302–470 Documentation.
1806.302–7 Public interest.
1806.303 Justifications.
1806.303–1 Requirements.
1806.303–170 Sole-source purchases by contractors.
1806.303–2 Content.
1806.303–270 Use of unusual and compelling urgency authority.
1806.304–70 Approval of NASA justifications.

Subpart 1806.5—Competition Advocates

1806.501 Requirement.
1806.502 Duties and responsibilities.

Authority: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40545, Aug. 5, 1996, unless otherwise noted.

Subpart 1806.2—Full and Open Competition After Exclusion of Sources

1806.202 Establishing or maintaining alternative sources. (NASA supplements paragraphs (a) and (b))

(a) The authority of FAR 6.202 is to be used to totally or partially exclude a particular source.

(b) The supporting data and the D&F must name the source to be excluded and shall include the following information as applicable and any other relevant information:

(i) The specific purpose to be served in excluding the source as enumerated in FAR 6.202(a).

(ii) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(iii) The circumstances making it necessary to exclude a particular source from the contract action:

(A) Reasons for lack of sources; e.g., the technical complexity and criticality of the item.

(B) Current annual requirement and prospective needs for the supplies and services.

(C) Projected future requirements.

(iv) Whether the existing source must be totally excluded from the action or whether a partial exclusion is sufficient.

(v) The potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions.

(vi) When the authority of FAR 6.202(a)(1) is cited, the basis for—

(A) Assumptions regarding future competition; and

(B) The determination that exclusion of a particular source will likely result in reduced overall costs for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, costs associated with facilities, duplicative administration costs (such as for additional inspection or testing), economic order quantities, and life-cycle-cost considerations.

(vii) When an additional source or additional sources must be established to provide production capacity to meet current and mobilization requirements—

(A) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, the planning data;

(B) A comparison of current production capacity with current and mobilization requirements; and

(C) The hazards of relying on the present source and the time required for new sources to acquire the necessary facilities and skills and achieve the production capacity necessary to meet requirements.

§ 1806.202–70 Formats.

A sample format for D&Fs citing the authority of FAR 6.202(a) follows:

Natonal Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Authority to Exclude a Source

On the basis of following findings and determination, which I make under the authority of 10 U.S.C. 2304(b)(1) as implemented by FAR 6.202, the proposed contract action described below may be awarded using full and open competition after exclusion of_____(1).

FINDINGS

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the source identified above.

2. The source identified above can be expected to receive an award for this requirement unless excluded.

3. It is necessary to establish or maintain an alternative source or sources.

4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of _____(2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on _____ (3).

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because_____(5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because_____(5).

DETERMINATION

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain

an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date_____

NOTES:

1. Name of source to be excluded.

2. Description of estimated reduction in overall costs.

3. Description of how estimate was derived.

4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.

5. Description of circumstances necessitating the exclusion of the identified source.

Subpart 1806.3—Other Than Full and Open Competition

§ 1806.302 Circumstances permitting other than full and open competition.

§ 1806.302–4 International agreement.

§ 1806.302–470 Documentation.

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302–4 is not required when the procurement officer signs a Memorandum for the Record that:

(a) Describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition;

(b) Is reviewed and approved by the appropriate competition advocate in accordance with NFS 1806.304–70; and

(c) Is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

1806.302–7 Public interest. (NASA supplements paragraph (c))

(c)(2) The notice to Congress shall be made by NASA Headquarters, Office of Legislative Affairs (Code LC). Code HS shall request the notice to be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302–7(c)(1) in any format that clearly documents the determination and the supporting findings.

1806.303 Justifications.

1806.303–1 Requirements. (NASA supplements paragraphs (b) and (d))

(b) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(d) The contracting officer shall send a copy of each approved justification or D&F that cites that authority of FAR 6.302–1 (a)(2)(i) or FAR 6.302–7 to NASA Headquarters, International Relations Division (Code IR), unless one of the exceptions at FAR 25.403 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303–1(d).

1806.303–170 Sole-source purchases by contractors.

The requirements of FAR part 6 and this part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified. Where ''brand name or equal'' purchase descriptions list the salient physical, functional, or other characteristics of the item being procured and are properly used under 1811.104, the justification requirements of FAR part 6 and this part 1806 do not apply.

1806.303–2 Content.

1806.303–270 Use of unusual and compelling urgency authority.

If the authority at FAR 6.302–2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303–2 and;

(a) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together

with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

1806.304–70 Approval of NASA justifications.

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR subparts 6.2 and 6.3 shall be obtained as follows:

(a) For proposed contracts over $500,000 but not exceeding $10,000,000—

(1) Concurring official: Procurement Officer

(2) Approving official: Center or Headquarters Competition Advocate.

(b) For proposed contracts over $10,000,000 but not exceeding $50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(2) Approving official: Center Director or Associate Administrator for Headquarters Operations.

(c) For proposed contracts over $50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(iii) Center Director or Associate Administrator for Headquarters Operations

(iv) Agency Competition Advocate

(2) Approving Official: Associate Administrator for Procurement

(d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(e) For proposed contract actions requiring approval by the Associate Administrator for Procurement, the original justification shall be forwarded to the Associate Administrator for Procurement (Code HS).

(f) Regardless of dollar value, class justifications shall be approved by the Associate Administrator for Procurement.

Subpart 1806.5—Competition Advocates

1806.501 Requirement. (NASA paragraphs (1), (2), (3) and (4))

(1) The Deputy Associate Administrator for Procurement is the agency competition advocate, reporting to the Associate Deputy Administrator on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Director, Program Operations Division, Code HS, is the competition advocate for the Headquarters contracting activity.

(4) The Deputy Manager is the contracting activity competition advocate for the Space Station Program Office.

1806.502 Duties and responsibilities. (NASA supplements paragraph (b))

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

PART 1807—ACQUISITION PLANNING

Subpart 1807.1—Acquisition Plans

Sec.
1807.103 Agency-head responsibilities.
1807.105 Contents of written acquisition plans.
1807.170 Acquisition Strategy Meeting (ASM).

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

Subpart 1807.3—Contractor Versus Government Performance

1807.307 Appeals.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy.

Subpart 1807.70—Consolidated Contracting

1807.7000 General.

Subpart 1807.71—Master Buy Plan

1807.7100 General.
1807.7101 Applicability.
1807.7102 Submission, selection, and notification procedures.
1807.7102–1 Submission of Master Buy Plan.
1807.7102–2 Submission of amendments to the Master Buy Plan.
1807.7102–3 Selection and notification procedures.
1807.7103 Format of Master Buy Plan.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Scope of subpart.
1807.7201 Definitions.
1807.7202 Policy.
1807.7203 Responsibilities.
1807.7204 Forecast data.
1807.7205 Public availability.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47068, Sept. 6, 1996, unless otherwise noted.

Subpart 1807.1—Acquisition Plans

1807.103 Agency-head responsibilities. (NASA supplements paragraphs (d) and (e))

(d)(i) Except as provided in paragraph (d)(iii) of this section, acquisition plans shall be prepared according to the following:

(A) For acquisitions requiring Headquarters approval, by an Acquisition Strategy Meeting (ASM) (see 1807.170);

(B) For acquisitions not requiring Headquarters approval and expected to exceed $5 million, by installation-approved ASMs or written acquisition plans; and,

(C) For acquisitions not expected to exceed $5 million, in accordance with installation procedures.

(ii) The estimated dollar amounts shall include all options and later phases of the same program or project.

(iii) Acquisition plans are not required for the following acquisitions:

(A) Architect-engineering services;

(B) Broad agency announcements (see 1835.016) or unsolicited proposals;

(C) Basic research from nonprofit organizations;

(D) Utility services available from only one source;

(E) From or through other Government agencies;

(F) Industrial facilities required in support of related contracts; or

(G) MidRange procedure awards (see part 1871). However, acquisition plans are required for commercial item acquisitions that exceed the MidRange dollar thresholds for noncommercial items.

(iv) Acquisition plans shall be approved before soliciting proposals.

(v) Approval of an acquisition plan does not constitute approval of any special conditions, or special clauses that may be required unless the plan so specifies, and the individual having approval authority is a signatory of the plan. All required deviations shall be approved through the procedures described in FAR 1.4 and 1801.4.

(vi) A single acquisition plan may be used for all phases of a phased acquisition provided the plan fully addresses each phase, and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes do occur, the plan shall be amended and approved at the same level as the original plan.

(e) Acquisition plans should be prepared on a program or system basis when practical. In such cases, the plan should fully address all component acquisitions of the program or system.

1807.105 Contents of written acquisition plans. (NASA supplements paragraphs (a) and (b))

Acquisition plans shall address each applicable topic listed in FAR 7.105, as supplemented by this section. Plans shall be structured by subject heading using each italicized topic heading in the same sequence as presented in the FAR. Subheadings should be used when appropriate (e.g., the separate items under contracting considerations at 7.105(b)(4)). Topics not applicable to a given acquisition (e.g., design-to-cost and should-cost are not compatible with service acquisitions), should be marked N/A.

(a)(1) Describe in nontechnical terms the supplies or services to be acquired. Include quantities.

(3) Identify the estimated cost and describe the estimating methodology.

(5) Specify the delivery or performance period requirements separately by the basic contract, each option, and the total.

(8) Streamlining applies to all NASA acquisitions. Describe all planned streamlining procedures.

(b)(1) If the acquisition represents a consolidation of efforts previously contracted for separately, address the reasons for the consolidation, the expected benefits, and any potential adverse impact (including the effect on small, small disadvantaged, and women-owned small business participation) and planned actions to mitigate the impact (see (1819.202–170).

(b)(3) Address how cost realism will be evaluated.

(4)(A) If an incentive contract is planned, describe the planned incentive(s) and the anticipated effects.

(B) Describe subcontracting issues, including all applicable subcontracting goals. (See FAR part 19 and part 1819).

(5)(A) Identify the estimated cost separately by the basic contract, each option and total amount.

(B) Identify the funding by fiscal year and unique project number (UPN).

(C) Discuss planned approaches to eliminate funding shortfalls (vs. the estimated cost).

(6) Identify the type of work statement/specification planned. Specifically address the applicability of performance-based requirement descriptions and the availability of commercial sources for the supplies/services.

(10) Address contract management issues, including planned delegations of administrative functions.

(19) If the period between release of solicitation to contract award is more than 120 calendar days (180 days for formal SEB competitions), explain why that goal cannot be met.

[61 FR 47068, Sept. 6, 1996, as amended at 62 FR 36705, July 9, 1997]

1807.170 Acquisition Strategy Meeting (ASM).

(a) The ASM is an acquisition plan conducted through a meeting attended by all interested NASA offices. At the meeting, the acquisition plan topics and structure specified in 1807.105 are presented in briefing format, and formal written minutes prepared to summarize the decision, actions, and conclusions of the ASM members. The approved minutes, along with the briefing charts, shall be included in the contract file to document completion of the acquisition plan required by 1807.103.

(b) The ASM is not a requirements definition meeting. It is a meeting to seek approval for the proposed acquisition approach for requirements that were previously defined and agreed to by the cognizant offices.

(c) Headquarters ASMs will be chaired by the Associate Administrator for Procurement or designee. The Headquarters Office of Procurement (Code HS) will prepare the minutes of Headquarters ASMs and distribute them to all attendees for review prior to approval by the ASM chairperson.

(d) For field installation ASMs, the minutes shall be approved in accordance with installation procedures.

Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities

1807.204 Responsibilities of contracting officers.

(NASA supplements paragraph (a))

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. The transmittal should be made within five working days after the closing date for receipt of offers; however, if a response indicates the potential for a significant savings, it should be transmitted immediately.

Subpart 1807.3—Contractor Versus Government Performance

1807.307 Appeals. (NASA supplements paragraph (a))

(a) Installations shall establish appeals procedures in accordance with NMI 7410.3, Delegation of Authority for Acquisition of Commercial Activities for NASA's Use.

Subpart 1807.5—Inherently Governmental Functions

1807.503 Policy. (NASA supplements paragraph (e))

(e) The field installation requirements office shall provide the contracting officer the written determination that none of the statement of work tasks are inherently governmental. Disagreements regarding the determination shall be resolved in accordance with installation procedures.

Subpart 1807.70—Consolidated Contracting

1807.7000 General.

The Consolidated Contracting Initiative (CCI) is NASA's commitment to the cooperative creation and utilization of contracts, whenever practicable, to meet common Agency needs. CCI aims at improving acquisition efficiency by identifying and logically combining similar requirements. Complete information on the initiative, with its implementation guidance, is available on the Internet (http://msfcinfo.msfc.nasa.gov/cci/first.html).

[62 FR 36705, July 9, 1997]

Subpart 1807.71—Master Buy Plan

1807.7100 General.

The Master Buy Plan provides information on planned acquisitions to enable management to focus its attention on a representative selection of high-dollar-value and otherwise sensitive acquisitions.

1807.7101 Applicability.

(a) The Master Buy Plan applies to each negotiated acquisition, including supplemental agreements, where the dollar value, including the aggregate amount of options, follow-on acquisitions, or later phases of multi-phase acquisitions, is expected to equal or exceed $50,000,000.

(b) For initial annual Master Buy Plan submission only, each installation shall submit its three largest acquisitions regardless of dollar value and all acquisitions over $50,000,000.

(c) The procedure also applies to:

(1) Any supplemental agreement that contains either new work, a debit change order, or a credit change order (or any combination/consolidation thereof), if the absolute value of the actions equals or exceeds $50,000,000 (e.g., the absolute value of a supplemental agreement adding $30,000,000 of new work and deleting $30,000,000 of work is $60,000,000, and is therefore subject to the Master Buy Plan).

(2) Any supplement agreement that contains one or more elements (new work and/or individual change orders) of a sensitive nature that, in the judgment of the installation or Headquarters, warrants Headquarters consideration under the Master Buy Plan, even though the value does not equal or exceed $50,000,000.

(d) The Master Buy Plan does not apply to incremental funding actions or termination settlement agreements.

1807.7102 Submission, selection, and notification procedures.

1807.7102–1 Submission of Master Buy Plan.

(a) Prior to July 15th of every year, each installation shall submit to the Headquarters Office of Procurement (Code HS) a Master Buy Plan (electronically or original and eight copies) for the next fiscal year, listing every known acquisition that

(1) Meets the criteria in 1807.7101,

(2) Is expected to be initiated in that fiscal year, and

(3) Has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan.

(b) The fiscal year Master Buy Plan shall list all uncompleted acquisitions selected for Headquarters review and approval from prior Master Buy Plans and amendments to Master Buy Plans. These acquisitions should be listed by the appropriate fiscal year Master Buy Plan and individual item numbers, and should indicate the current status of the individual acquisition documents previously selected for Headquarters review and approval.

(c) Plans shall be prepared in accordance with 1807.7103 and shall identify the individual acquisition documents involved for every acquisition listed. Acquisition documents that may require Headquarters approval will be

held in abeyance until receipt of the notification required by 1807.7102–3. This is not to preclude the planning for or initiation of such documents up to that point where Headquarters approval may be required.

1807.7102–2 Submission of amendments to the Master Buy Plan.

(a) Acquisitions identified by installations after submission of their Master Buy Plan and meeting the criteria in 1807.7102–1(a) shall be submitted to Headquarters in accordance with 1807.7103 and identified as an amendment to the fiscal year Master Buy Plan submission.

(b) Master Buy Plan submissions should not be accomplished after the fact. Amendments shall be submitted sufficiently in advance of contract award date to allow Headquarters to select those acquisition documents that will be subject to Headquarters review and approval without creating an unacceptable delay in contract placement.

(c) When timely submittal is not possible, the installation shall provide with the amendment a narrative explaining the circumstances leading to the late submittal. A Master Buy Plan submission for a contract change order expected to meet the criteria in 1807.7101 shall be submitted to Headquarters immediately upon issuance of the change order.

1807.7102–3 Selection and notification procedures.

(a) The Headquarters Office of Procurement (Code HS) shall select acquisition documents from the Master Buy Plan and amendments to Master Buy Plans to receive Headquarters review and approval and shall designate source selection officials.

(b) When, subsequent to document selection or delegation, an acquisition is changed (for example, increase or decrease in dollar amount, change in requirement), canceled, superseded, deferred, or becomes no longer subject to the Master Buy Plan procedures in accordance with the criteria in 1807.7101, the installation shall immediately notify Code HS, giving the reasons. Code HS shall notify the installation's procurement office in writing of any further action that may be required.

(c) Acquisition documents not selected for Headquarters review will be subject to after-the-fact reviews by Headquarters during normal procurement management surveys or other special reviews. Acquisition delegations may subsequently be rescinded if a Headquarters review is deemed appropriate.

1807.7103 Format of Master Buy Plan.

In accordance with the requirements of 1807.7102–1 and 1807.7102–2, Master Buy Plans and amendments to Master Buy Plans shall be prepared in accordance with the format illustrated in Table 1807–1.

Subpart 1807.72—Acquisition Forecasting

1807.7200 Scope of subpart.

This subpart prescribes the acquisition forecasting procedure required to comply with the Business Opportunity Development Reform Act of 1988.

1807.7201 Definitions.

Class of contracts means a grouping of acquisitions, either by dollar value or by the nature of supplies and services to be acquired.

Contract opportunity means planned new contract awards exceeding $25,000.

1807.7202 Policy.

As required by statute, it is NASA policy to

(a) Prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year;

(b) Include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and

(c) Make available such forecasts to the public.

1807.7203 Responsibilities.

(a) NASA procurement officers shall furnish the Headquarters Office of Procurement (Code HS) with the data required in 1807.7204 on September 1 for

the annual forecast and March 15 for the semiannual update.

(b) Code HS will prepare and distribute the consolidated annual forecast and the semiannual update.

1807.7204 Forecast data.

(a) The annual forecast shall contain—

(1) Summary historical data (based on information provided by the Headquarters Office of Procurement (Codes HC and HS)) on the class of contract opportunities below the simplified acquisition threshold;

(2) Identification of all known contract opportunities in excess of the simplified acquisition threshold. Each such action should be identified as one of the three broad categories of acqusition—Research and Development, Services, or Supplies and Equipment and shall include the following information:

(i) A brief description not to exceed ten typed lines;

(ii) Approximate dollar value within the following dollar ranges: $100,000 to $1,000,000; $1,000,000 to $5,000,000; and over $5,000,000;

(iii) Anticipated time (by fiscal year quarter) for the issuance of the solicitation;

(iv) Identification if it is reserved for performance by small business concerns including those owned and controlled by socially and economically disadvantaged individuals;

(v) Identification as competitive or noncompetitive; and

(vi) Identification and telephone number of a center point of contact.

(b) The semiannual report shall be an update of the data provided by the annual forecast. This update should provide information on new requirements not previously reported and on changes in data related to actions previously identified.

1807.7205 Public availability.

(a) The annual forecast and semiannual update are available via the NASA Acquisition Internet Service (NAIS) (http://procurement.nasa.gov.).

(b) The forecasts may also be obtained from the Headquarters Office of Procurement (Code HS) and the Office of Small and Disadvantaged Business Utilization (Code K).

TABLE 1807–1

FORMAT
MASTER BUY PLAN PROCEDURES

Line Item No: _____ **FY** _____ **Page No.:** _____

Installation: _____ **Date:** _____

(1) Cognizant Headquarters Office	(2) Descriptive Title of Procurement	(3) Estimated Dollar Value	(4) Acquisition Plan	(5) JOFOC	(6) RFP	(7) SEB	(8) Pre-Neg	(9) Contract Review

(10)
Current
Status

(11)
Remarks

INSTRUCTIONS

General

1. Prepare on 8-1/2" x 11" paper or electronically.
2. List only one procurement on each page and number each page. Sequentially number each procurement action with a two digit "Line Item Number" beginning with "01" for each annual submission and subsequent amendments.
3. For the initial submission only, list procurements and their current status from prior fiscal year(s) Master Buy Plans and amendments to MBPs that have not been completed.
4. Do not reproduce these instructions on the submission.

Supplementary instructions by heading number

(1) Include letter code and Headquarters contact, if known.
(2) Include an "N" to indicate new procurement or "FO" to indicate follow-on procurement.
(3) A range of dollar values may be used, if the exact value is unavailable. Express the range as $120M to $25M, $25M to $50M, and so forth in $25M increments. Include all phases of the procurement. All dollar values must be in real year dollars, i.e., adjusted to include anticipated inflation.
(4) Installation recommendation ("Y" or "N") that an Acquisition Strategy Meeting be held. (The final decision will be made by Headquarters upon review of the MBP submission.)
(5)-(9) Use "X" to indicate applicable documents. If column (8) contains and "X", include your recommendation in that column for the Source Selection Official (SSO). The recommendation should be either the Center SSO or Headquarters SSO (HSSO).
(10) Status should include scheduled date for next event. (Complete horizontally.)
(11) Include data considered pertinent and indicate expected date for placement of contract. If less than full and open competition is involved, indicate the authority being used, identify the firm(s) to which the procurement is being limited, and indicate the current status of the justification document. Include the names and telephone numbers of the cognizant installation procurement person and technical representative.

REPRODUCED AT GOVT. EXPENSE

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
1808.002 Use of other Government supply sources.
1808.002–70 Acquisition of radioisotopes.
1808.002–71 Acquisition of liquid hydrogen.
1808.002–72 Acquisition of propellants.
1808.002–75 Acquisition of mercury.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

Subpart 1808.4—Federal Supply Schedules

1808.404 Using schedules.
1808.404–3 Requests for waivers.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances.

Subpart 1808.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

1808.705 Procedures.
1808.705–1 General.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy.
1808.870 Contract clause.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 47073, Sept. 6, 1996, unless otherwise noted.

1808.002 Use of other Government supply sources.

1808.002–70 Acquisition of radioisotopes.

(a) DOE Form 5400.3, U.S. Department of Energy Isotope Order Blank, and NRC Form 313, U.S. Nuclear Regulatory Commission Application for Material License, shall be used to acquire radioisotopes, as stated on the back of DOE Form 5400.3. No other type of order blank, purchase order, or contract may be used in lieu of these forms.

(b) NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, the Radioisotopes Licensing Branch, Nuclear Regulatory Commission, will issue a license to the applicant. After receipt of the license, a completed DOE Form 5400.3 (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) NRC Form 313 and DOE Form 5400.3 shall be requisitioned directly from United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

1808.002–71 Acquisition of liquid hydrogen.

Rquests for liquid hydrogen shall be submitted to the John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899, Attn: Director of Logistics Operations.

1808.002–72 Acqusition of propellants.

(a) General. NASA (and its contractors when authorized in accordance with 1851.1) may acquire the items listed in paragraph (j) of this section (except for liquid hydrogen; see 1808.002–71) on a reimbursable basis from the San Antonio Air Logistics Center (SA–ALC), Kelly Air Force Base, Texas, under the Air Force Missile Procurement Fund (MPF). The Air Force MPF shall be used as a supply source for propellants whenever there are economic or other advantages to the Government. Field installations and offices obtaining supplies from the MPF shall comply with the reporting requirements of paragraph (f) of this section.

(b) Requests for acquisition. To obtain the materials listed in paragraph (j) of this section from the Air Force MPF, NASA contracting offices will

execute a NASA-Defense Purchase Request (NASA Form 523) (see 1853.303–523) and forward it to Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: SFS. The following additional information should be provided on the form:

(1) Contract number (when material is required for use by a NASA contractor).

(2) Delivery address.

(3) Mode of transportation (rail, trailer, barge, etc.). When the procurement request covers requirements for materials not previously forecasted or covers significant changes to previously reported requirements, SA–ALC should be notified immediately of such requirements.

(c) Delivery requests.

(1) A delivery request is a call on the Air Force, made against a NASA-Defense Purchase Request (NASA Form 523), specifying the time and place of delivery. On the basis of the estimated requirements, the Air Force will notify NASA field installations and contractors of the name and address of the Air Force office or producing contractor's plant to which requests for delivery of materials shall be made. Delivery requests may be placed by any means of communication that time justifies; however, all verbal requests for delivery must be confirmed in writing within 24 hours. The delivery request, whether oral or written, must cite the NASA-Defense Purchase Request number under which the material is being ordered and contain the following information:

(i) Nomenclature and National Stock Number.

(ii) Quantity.

(iii) Program, project, and task.

(iv) Contract number (when material is required for use by a NASA contractor).

(v) Delivery address.

(vi) Dates of delivery.

(vii) Mode of transportation.

(viii) Location of weighting stations and scales (if weighing of the products before delivery is required).

(2) Each delivery request shall be numbered as follows to simplify identification and control: the last two digits of the calendar year; a dash; and a consecutive number beginning with 1 to run through the year (e.g., 89–5, for the fifth request made in 1989). Changes to a request are identified by adding an alphabetical designator beginning with (A) to the number.

(d) Receiving procedures.

(1) Receiving documents. Receipt of materials shall be evidenced on the receiving document received with the shipment by the signature of an individual authorized by NASA to receive materials from the Air Force. Every effort should be made to ensure that the NASA-Defense Purchase Request number is recorded on the receiving document before signing.

(2) Weighing facilities. Local weighing facilities (NASA-owned, contractor-owned, commercial, or State-operated) may be used to determine quantities of product received. If a discrepancy exists between the quantities shown on receiving documents and the quantities actually received—

(i) A certified weighing ticket evidencing actual weight at destination shall be obtained; and

(ii) A copy of the receiving document (AF Form 857 or DD Form 250) and the original weighting ticket shall be forwarded to Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: ACFOM, identifying the discrepancy.

(3) Distribution of receipts. Copies of all receiving documents except the AF Form 857 shall be transmitted to the Headquarters, SA–ALC, Kelly Air Force Base, TX 78241, Attention: SACAOM. Receiving documents may be accumulated and submitted on the 10th, 20th, and last day of each month.

(e) Billing. The costs of materials obtained through the MPF are reimbursable. After delivery, a Standard Form 1080 (Voucher for Transfers Between Appropriations and/or Funds (Disbursement)), supported by documentary evidence of delivery, will be submitted by Headquarters, SA–ALC to the NASA installation designated in the NASA Form 523.

(f) Reporting requirements.

(1) Field installations shall submit periodic estimates of requirements for materials listed in paragraph (j) of this section for all programs under their

cognizance, including in-house contractor requirements. Reports shall be submitted in duplicate on AF Form 858, Forecast of Propellant Requirements.

(2) The reports shall be forwarded no later than June 1 and December 1 to reach Headquarters, SA–ALC, Kelly AFB, TX 78241, Attn: SFS. Supplemental reports advising of additions to or significant changes in previous reports may be submitted at any time. The reports, covering all materials listed in paragraph (j) of this section, due in June and December, shall begin with requirements as of the following July 1 and January 1, respectively, and shall cover a 3-year period. Requirements shall be shown by month for the first 6 months, and by quarters for the remaining 2½-year period.

(3) Estimated requirements and other pertinent data required from contractors shall be obtained on Air Force Form 858.

(g) Report content. Reports shall be made using a separate report form for each material and shall provide, for each item of material, the—

(1) Contract number;

(2) Program and/or project;

(3) Specific task within the project;

(4) End use when not associated with the named program or project;

(5) Contractor's name;

(6) Specific location of use (shipping destination); and

(7) Planned source of supply.

(h) Basis for developing materials requirements. In computing requirements, consideration shall be given to such elements as lead time, waste factors, transfer, and storage losses so that phased requirements reflect the total gross quantities required to be delivered to the use or storage site. Since the requirements estimates are being used by other Government agencies acting as supply sources to contract for materials, estimates must be as accurate as possible.

(i) NASA coordination. The Kennedy Space Center shall coordinate the review of all data and establish NASA policy and procedures. The data shall be used as the basis for NASA requirements reports to various Government agencies for planning and supply support.

(j) Table of reportable materials.

Ammonia, Technical (Anhydrous) (Low Oil Content) 99.97 percent purity, Spec 0–A–445

Argon Gas, 6000 PSI, AFPID 6830–5

Propellant, Ammonia, Liquid, Anhydrous 99.5 percent purity, Spec MIL–P–27406

Propellant, Chlorine Trifluoride, Spec MIL–P–81399

Propellant, Deuterium, Gaseous, AFPID 9135–20

Propellant, Fluorine, Gaseous, Spec MIL–P–27405

Propellant, Fluorine, Liquid, Spec MIL–P–27405

Helium, Technical Grade A, Spec BB–H–1168

Propellant, Isopropyl Alcohol, AFPID 9135–18

Propellant, Hydrazine, Standard Grade, Spec MIL–P–26536

Propellant, Hydrazine, Monopropellant Grade, Spec MIL–P–26536

Propellant, Hydrazine/Unsymmetrical Dimethylhydrazine, Spec MIL–P–27402

Propellant, Hydrogen, Gaseous, Type I, Spec MIL–P–27201

Propellant, Hydrogen, Liquid, Type II, Spec MIL–P–27201

Propellant, Hydrogen Peroxide, Spec MIL–P–16005

Propellant, Hydrogen Peroxide, Electrolytic Process, Spec MIL–P–16005

Propellant, Jet Fuel, Grade RJ–1, Spec MIL–F–25558

Propellant, JPX, 50% UDMH–50% JP–4, Spec MIL–P–26694

Propellant, JPX, 17% UDMH–83% JP–4, Spec MIL–P–26694

Propellant, Kerosene, Grade RP–1, Spec MIL–P–25576

Propellant, Monomethyl Hydrazine, Spec MIL–P–27404

Propellant, Neon, Liquid, AFPID 9135–16

Propellant, Nitric Acid, Type IIIB, Spec MIL–P–7254

Propellant, Nitric Acid, Type III LS, Spec MIL–P–7254

Propellant, Nitric Acid, Type IV (High Density Acid), Spec MIL–P–7254

Propellant, Nitrogen Tetroxide (NTO) (MON–1) (MON–3), Spec MIL–P–26539

Propellant, Nitrogen Tetroxide (NTO), MIL–P–26539

Propellant, Nitrogen Tetroxide (MON–1), Spec MIL–P–26539

Propellant, Nitrogen Tetroxide (MON–3), Spec MIL–P–26539
Propellant, Oxygen, Grade B, Spec MIL–P–25508
Propellant, Oxygen, Grade A, Spec MIL–P–25508
Propellant, Oxygen, Grade F, Spec MIL–P–25508
Propellant Pressurizing Agent, Helium, Spec MIL–P–27407, 99.995 pct min assay
Propellant Pressurizing Agent, Nitrogen, Type II, Liquid Grade C, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type I, Gaseous Grade A, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type I, Grade B, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade A, Spec MIL–P–27401
Propellant Pressurizing Agent, Nitrogen, Type II, Grade B, Spec MIL–P–27401
Propellant, Unsymmetrical Dimethylhydrazine, Spec MIL–P–25604
Propellant, Nitrogen Trifluoride Spec MIL–P–87896
Propellant, Pressurizing Agent, Argon, Liquid, AFPID 9135–19

1808.002–75 Acquisition of mercury.

(a) Requests for mercury by NASA installations for their use or for use by their cost-reimbursement type contractors shall be made to the Mercury Contract Specialist, Directorate of Stockpile Contracts, DLA, Defense National Stockpile Center, 8725 John J. Kingman Rd., #3339, Ft. Belvoir, VA 22060–6223. DLA will furnish the current fair market value to NASA. The unit of issue is a 76-pound flask.

(b) Requests for clearance to purchase quantities of 76 pounds or more from sources other than DLA shall be submitted to the office in paragraph (a) of this section and must be accompanied by a statement of reasons why the available excess mercury is unsuitable for use by the requesting field installation.

Subpart 1808.1—Excess Personal Property

1808.103 Information on available excess personal property.

In addition to the sources identified in FAR 8.103, information on availability of NASA excess property is maintained by the Installation Property Disposal Officer and the NASA Equipment Management System (NEMS) Coordinator.

Subpart 1808.4—Federal Supply Schedules

1808.404 Using schedules.

1808.404–3 Requests for waivers. (NASA supplements paragraphs (a) and (b)).

(a) The head of the NASA office initiating the procurement request or a designated representative shall furnish the NASA contracting office a signed statement identifying the supplies or services to be purchased and explaining why similar items listed in the applicable schedule will not meet the requirement.

(b) If a waiver is not granted, the case shall be referred to the Associate Administrator for Procurement (Code HS) for a final decision as to whether the non-schedule item will be purchased. The Associate Administrator for Procurement shall promptly notify the Commissioner, Federal Supply Service, GSA, and the contracting office of the decision.

Subpart 1808.6—Acquisition From Federal Prison Industries, Inc.

1808.605 Clearances. (NASA supplements paragraphs (a) and (c)).

(a) NASA purchase orders or contracts written pursuant to a general or blanket clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher. A copy of the clearance certificate must be attached to the initial voucher.

(c) When disputes occur, the contracting officer shall refer the matter

to the Associate Administrator for Procurement (Code HS) for review and any further action. Such referrals shall include a complete statement of the attempts made to resolve the matter.

Subpart 1808.7—Acquisition From Nonprofit Agencies Employing People Who are Blind or Severely Disabled

1808.705 Procedures.

1808.705–1 General.

The Federal Standard Requisitioning and Issue Procedure (Federal Property Management Regulation, Subpart 101–26.2) shall be used to obtain nonprofit agency-produced supplies from GSA supply distribution facilities.

Subpart 1808.8—Acquisition of Printing and Related Supplies

1808.802 Policy. (NASA supplements (paragraph (b)).

(b) (i) The Headquarters Information Resources Management Division (Code JT) is the NASA central printing authority.

(ii) Requests for approval to contract for printing supplies or services shall be addressed to Code JT. Approval to contract for such supplies or services is restricted to those requirements meeting the following conditions:

(A) An individual order is under $1,000;

(B) The order is not of a continuing or repetitive nature; and,

(C) The Public Printer certifies it cannot be provided more economically through the GPO.

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208–81, Restrictions on Printing and Duplicating, in solicitations and contracts where there is a requirement for any printing, and/or any duplicating/copying in excess of that described in paragraph (c) of the clause.

Subpart 1808.11—Leasing of Motor Vehicles

1808.1100 Scope of subpart.

NASA procedures for leasing motor vehicles from GSA or commercial sources are contained in NMI 6000.5, Transportation Management.

PART 1809—CONTRACTOR QUALIFICATIONS

Subpart 1809.1—Responsible Prospective Contractors

Sec.
1809.104–4 Subcontract responsibility.
1809.106 Preaward surveys.
1809.106–1 Conditions for preaward surveys.
1809.106–2 Requests for preaward surveys.
1809.106–3 Interagency preaward surveys.
1809.106–70 Preaward surveys performed by NASA installations.

Subpart 1809.2—Qualifications Requirements

1809.200 Scope of subpart.
1809.202 Policy.
1809.203 QPL's, QML's, and QBL's.
1809.203–70 General.
1809.203–71 Waiver of qualification requirements.
1809.206 Acquisitions subject to qualification requirements.
1809.206–1 General.
1809.206–70 Small businesses.
1809.206–71 Contract clause.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.
1809.404 List of Parties Excluded from Federal Procurement and Nonprocurement programs.
1809.405 Effect of listing.
1809.405–1 Continuation of current contracts.
1809.405–2 Restrictions on subcontracting.
1809.406 Debarment.
1809.406–3 Procedures.
1809.407 Suspension.
1809.407–3 Procedures.
1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.
1809.470–1 Situations requiring reports.
1809.470–2 Contents of reports.
1809.470–3 Addresses and copies of reports.

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.
1809.503 Waiver.
1809.506 Procedures.
1809.507 Solicitation provisions and contract clause.
1809.507–2 Contract clause.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47075, Sept. 6, 1996, unless otherwise noted.

Subpart 1809.1—Responsible Prospective Contractors

1809.104–4 Subcontractor responsibility.

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting office, the contracting officer shall request from the CCC and any other sources whatever information is necessary to make the responsibility determination.

Upon request, CCC shall be furnished the rationale for any subsequent determination of nonresponsibility.

1809.106 Preaward surveys.

1809.106–1 Conditions for preaward surveys. (NASA supplements paragraph (a)).

(a)(i) Preaward surveys are used only to assist the contracting officer to make determinations of responsibility under FAR 9.104. They are not to be used to obtain information useful to proposal evaluation that does not directly relate to the responsibility determination. Accordingly, preaward surveys shall not be used except in rare circumstances when determination of responsibility cannot be made without the specific information that can be provided only in a preaward survey report and only after all other means of obtaining the required information have been explored.

(ii) Surveys shall not be performed for companies of any size performing study or research contracts.

(iii) The procurement officer shall approve all preaward survey requests.

1809.106–2 Requests for preaward surveys. (NASA supplements paragraph (a))

(a) The ''Walsh-Healey Public Contracts Act'' block of Section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of Section III.

1809.106–3 Interagency preaward surveys. (NASA supplements paragraph (a))

If the survey will be performed for NASA by a DOD agency, the SF 1403 request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DLAH 4105.4, Attn: Preaward Survey Monitor. DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

[61 FR 47075, Sept. 6, 1996, as amended at 62 FR 36705, July 9, 1997]

1809.106–70 Preaward surveys performed by NASA installations.

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

Subpart 1809.2—Qualifications Requirements

1809.200 Scope of subpart.

This subpart prescribes policies and procedures to be followed in the use of qualified products lists for acquisition of parts as authorized by NMI 5320.5,

Basic Policy for NASA Space Flight Program Electrical, Electronic, and Electromechanical (EEE) Parts.

1809.202 Policy. (NASA supplements paragraphs (a) and (e))

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's and QBL's.

1809.203–70 General. (NASA supplements paragraph (a))

(a) The Deputy Associate Administrator for the Office of Safety and Mission Assurance (Code Q), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA EEE Parts and Advanced Interconnect Program.

1809.203–71 Waiver of qualification requirements.

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see FAR subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206–1 General. (NASA supplements paragraph (b) and (c))

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a non-emergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance (Code Q).

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

1809.206–70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (Mil–Bul–103) or the Qualified Manufacturers List (QML–38510) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR subpart 19.6 are applicable.

1809.206–71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209–70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4—Debarment, Suspension, and Ineligibility

1809.403 Definitions.

For purposes of FAR subpart 9.4 and this subpart, the Associate Administrator for Procurement is the ''debarring official,'' the ''suspending official,'' and the agency head's ''designee.''

1809.404 List of parties excluded from federal procurement and non-procurement programs. (NASA supplements paragraphs (c) and (d))

(c) The Office of Procurement (Code HS) is responsible for taking the actions listed in FAR 9.404(c).

(d)(1) Installation procurement offices shall notify Code HS of how many

copies of the List they want and provide a single mailing address at the installation. Code HS will place the order for the copies which will be mailed directly to the installation. Electronic access is also available as described in the List.

1809.405 Effect of listing

If it is believed that a new contract or subcontract must be awarded to a firm on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the procurement officer shall prepare a request for a determination with all necessary supporting information and forward it to the Associate Administrator for Procurement (Code HS) for approval.

1809.405–1 Continuation of current contracts. (NASA supplements paragraph (c))

(c) Approval of contract renewals or extensions shall be requested in accordance with 1809.405.

1809.405–2 Restrictions on subcontracting. NASA supplements paragraph (a)).

(a) Approval of consent to subcontract shall be requested in accordance with 1809.405.

1809.406 Debarment.

1809.406–3 Procedures. (NASA supplements paragraph (a))

(a) The report required by FAR 9.406–3(a) shall be prepared in accordance with 1809.470.

1809.407 Suspension.

1809.407–3 Procedures. (NASA supplements paragraph (a))

(a) Reports shall be prepared in accordance with 1809.470.

1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters. (NASA supplements paragraph (a))

(a)(2) (A) If the offeror indicates that it has been indicted, charged, convicted, or had a civil judgment rendered against it, the contracting officer shall immediately notify the Associate Administrator for Procurement (Code HS), providing details as known, and shall await a response before awarding the contract.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Associate Administrator for Procurement (Code HS) in accordance with 1809.470.

1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.

1809.470–1 Situations requiring reports.

A report incorporating the information required by 1809.470–2 of this subpart shall be forwarded by the procurement officer to the Associate Administrator for Procurement (Code HS) when a contractor:

(a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406–2 and 9.407–2; or

(b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR by changes of address, multiple addresses, formation of new companies, or other devices.

1809.470–2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

(a) Name and address of the contractor.

(b) Names of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.

(h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.

(i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.

(j) Recommendation as to

(1) Whether the contractor should be suspended or debarred,

(2) Whether any limitations should be applied to such action,

(3) Whether current contracts should be terminated, and

(4) The period of any debarment.

(k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470–3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted to the Office of Procurement (Code HS), with an additional copy to the Headquarters Office of General Counsel (Code G).

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.

The Associate Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Associate Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Associate Administrator for Procurement (Code HS) for action.

1809.506 Procedures. (NASA supplements paragraph (b))

(b) The approving official is the procurement officer when the installation has source selection authority and the Associate Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

1809.507 Solicitation provisions and contract clause.

1809.507–2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209–71, Limitation of Future Contracting, in solicitations and contracts.

Subpart 1809.6—Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209–72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

PART 1811—DESCRIBING AGENCY NEEDS

Sec.

1811.002 Policy.

Subpart 1811.1—Selecting and Developing Requirements Documents

1811.104 Items peculiar to one manufacturer.
1811.104–70 Brand name or equal purchase descriptions.
1811.104–71 NASA solicitation provision.

Subpart 1811.4—Delivery or Performance Schedules

1811.403 Supplies or services.
1811.404 Contract clauses.

Subpart 1811.5—Liquidated Damages

1811.502 Policy.

Subpart 1811.6 Priorities and Allocations

1811.602 General.
1811.603 Procedures.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47078, Sept. 6, 1996, unless otherwise noted.

1811.002 Policy. (NASA supplements paragraph (b))

(b) Implementation of the Metric Conversion Act of 1975, as amended, shall be in accordance with NPD 8010.2B, Use of the Metric System of Measurements in NASA Programs.

Subpart 1811.1—Selecting and Developing Requirements Documents

1811.104 Items peculiar to one manufacturer.

1811.104–70 Brand name or equal purchase descriptions.

(a) Use of brand-name purchase descriptions is the least preferred method for describing Agency requirements. Purchase descriptions containing references to one or more brand-name products, or components of a product, followed by ''or equal'' may be used only in accordance with this part 1811.

(b) The term ''or equal'' should not be added if it is determined under FAR 11.104 that only a particular product meets the essential requirements of the Government.

(c) To the extent feasible, all acceptable brand-name products should be referenced. If ''brand-name-or-equal'' is used, offerors must be given the opportunity to offer products other than those referenced by brand-name if those products will meet the needs of the Government in essentially the same manner.

(d) ''Brand-name-or-equal'' purchase descriptions should set forth the salient physical, functional, or other characteristics essential to the needs of the Government. Purchase descriptions should include the following items and any other information necessary to describe the item:

(1) Complete common generic identification of the item.

(2) Model, make, or catalog number for each brand name product, and identity of the commercial catalog in which it appears.

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

(e) When it is needed to describe the item required, a commercial catalog description, or pertinent extracts, may be used if the description is identified in the solicitation as being that of the manufacturer, producer, or distributor. The contracting officer shall ensure that a copy of any catalog referenced (except parts catalogs) is available on request for review by offerors at the contracting office.

(f) Offerors offering brand-name products shall not be required to furnish samples; however, solicitations may require the submission of samples from offerors proposing ''or equal'' products.

(g) Proposals offering products differing from brand-name products referenced in a ''brand-name-or-equal'' purchase description shall be considered for award if the contracting officer determines that the offered products meet the salient characteristics required by the solicitation. Offers shall not be rejected because of minor differences in design, construction, or features that do not affect the suitability of the products for their intended use.

(h) Except as provided in paragraph (i)(1) of this section, when a ''brand-name-or-equal'' purchase description is included in a solicitation, the following shall be inserted after each item so described in the solicitation for completion by the offeror:

Offering:

Manufacturer's Name _____

Brand _____

No. _____

(i) If the contracting officer determines that the provision at 1852.211–70 should apply only to certain components, the requirements of paragraph (h) of this section shall apply to them, and a statement substantially as follows shall be included:

The provision entitled Brand Name or Equal applies to the following components:

(List the components to which the provision applies.)

(j) Award documents for brand-name-or-equal acquisitions shall identify the specific products or components the contractor is to furnish. This identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the solicitation.

1811.104–71 NASA solicitation provision.

When a ''brand-name-or-equal'' purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.211–70, Brand Name or Equal.

Subpart 1811.4—Delivery or Performance Schedules

1811.403 Supplies or services. (NASA supplements paragraph (a))

(a)(3) Contract delivery or performance schedules shall not be expressed in terms of a notice of award. A notice of award as a specific document, separate from the award document itself, is not a contractual document and shall not be used as a reference point for contract performance. See 1814.408 for additional information on notices of award.

811.404 Contract clauses. (NASA supplements paragraph (a))

(a)(2) FAR 52.211–8, Time of Delivery, Alternates II and III, shall not be used in NASA contracts.

(3) FAR 52.211–9, Desired and Required Time of Delivery, Alternates II and III, shall not be used in NASA contracts.

Subpart 1811.5—Liquidated Damages

1811.502 Policy. (NASA supplements paragraph (d))

(d) The procurement officer shall forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement (Code HS).

Subpart 1811.6—Priorities and Allocations

1811.602 General. (NASA supplements paragraph (c))

(c) The Department of Defense is the ''Delegate Agency'' for NASA. The Headquarters Office of Procurement (Code HS) shall coordinate with DOD, as necessary, to ensure that any DOD requirements are met.

1811.603 Procedures. (NASA supplements paragraphs (e) and (g))

(e)(i) The use of priority ratings on NASA contracts and purchase orders is mandatory except as noted in paragraph (e)(ii) of this section. Priority ratings are assigned on individual contracts and purchase orders by the contracting officer.

(ii) Priority ratings will not be issued for the following:

(A) Items ordered or requisitioned from the GSA Federal Supply Service.

(B) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order, or unless NASA has obtained specific priority rating authority.

(C) Production or construction equipment or items to be used for the manufacture of production equipment, unless NASA has obtained specific priority rating authority.

(D) Items falling under the jurisdiction of agencies other than NASA's Delegate Agency. These are: petroleum, gas, solid fuel, electric power, and all other forms of energy; food; civil transportation and the movement of persons and property by all modes; minerals; water; housing facilities; health facilities; radio-isotopes, stable isotopes, source material and special nuclear material produced in Government-owned plants or facilities operated by or for the Department of Energy; communication services; copper raw materials; crushed stone; gravel; sand; scrap; slag; central steam heat; and waste paper.

(iii) All other NASA orders shall be assigned a DO rating, unless NASA has obtained a DX rating from the Delegate Agency.

(iv) The program identification numbers (DPAS, 15 CFR part 700, SCH L.) to be used by NASA are as follows:

A1 Aircraft
A2 Missiles
A3 Ships
A5 Weapons
A6 Ammunition
A7 Electronic and Communications Equipment
B1 Military Building Supplies
B8 Production Equipment (for Contractor's Account)
B9 Production Equipment (Government-Owned)
C2 Construction
C3 Maintenance, Repair, and Operating Supplies for Facilities
C9 Miscellaneous/Other

(g) Installation requests for assistance shall be directed to the Headquarters Office of Procurement (Code HS).

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

Subpart 1812.1—Acquisition of Commercial Items—General

Sec.
1812.102 Applicability.

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
1812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Subpart 1812.4—Unique Requirements Regarding Terms and Conditions for Commerical Items

1812.404 Warranties.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47079, Sept. 6, 1996, unless otherwise noted.

Subpart 1812.1—Acquisition of Commercial Items—General

1812.102 Applicability. (NASA supplements paragraph (c))

(c) For the acquisition of commercial items of any value, the MidRange procedures described in part 1871 may be used to the extent they are consistent and compliant with FAR part 12 and part 1812. Unless specifically stated, in any conflict between these parts the descending order of precedence is FAR part 12, part 1812, and part 1871.

Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items. (NASA supplements paragraph (f))

(f)(i) The following clauses may be used in acquisitions of commercial items:

(A) 1852.214–71, Grouping for Aggregate Award.

(B) 1852.214–72, Full Quantities.

(C) 1852.215–84, Ombudsman.

(D) 1852.219–75, Small Business and Small Disadvantaged Business Subcontracting Reporting.

(E) 1852.219–76, NASA Small Disadvantaged Business Goal.

(F) 1852.228–72, Cross-Waiver of Liability for Space Shuttle Services.

(G) 1852.228–76, Cross-Waiver of Liability for Space Station Activities.

(H) 1852.228–78, Cross-Waiver of Liability for NASA Expendable Launch Vehicles.

(I) 1852.232–70, NASA Progress Payment Rates.

(ii) No other provisions and clauses prescribed in the NFS or center documents shall be used in acquisitions of commercial items, except as permitted by FAR 12.302.

(J) 1852.246–72, Material Inspection and Receiving Report.

[61 FR 47079, Sept. 6, 1996, as amended at 62 FR 14017, Mar. 25, 1997]

1812.302 Tailoring of provisions and clauses for the acquisition of commercial items. (NASA supplements paragraph (c))

(c) The Associate Administrator for Procurement (Code HS) is the approval authority for waivers. Requests shall be prepared and submitted in accordance with 1801.471.

Subpart 1812.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

1812.404 Warranties.

(b) In acquisitions under the Simplified Acquisition Threshold specified in FAR part 13, no express warranty should be required other than the offeror's commercial warranty.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

Sec.
1813.000 Scope of part.

Subpart 1813.1—General.

1813.103 Policy.
1813.106–2 Purchases exceeding the micro-purchase threshold.

Subpart 1813.2—Blanket Purchase Agreements

1813.202 Establishment of blanket purchase agreements (BPAs).

Subpart 1813.5—Purchase Orders

1813.501 General.
1813.501–70 Purchase orders under section 8(a) of the Small Business Act.
1813.505 Purchase order and related forms.

Subpart 1813.70—Governmentwide Commercial Purchase Card

1813.7000 General.
1813.7001 Cardholders.
1813.7002 Purchase card documentation.
1813.7003 Approving official.
1813.7004 Program officials.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36705, July 9, 1997, unless otherwise noted.

1813.000 Scope of part.

FAR Part 13 and 1813 do not apply to NASA Research Announcements and Announcements of Opportunity. These acquisitions shall be conducted in accordance with the procedures in 1835.016–70 and 1872, respectively.

Subpart 1813.1—General

1813.103 Policy. (NASA supplements paragraphs (e), (f), and (j))

(e) Except for purchases authorized by 1813.103(f), the Governmentwide commercial purchase card may be used for purchases of $25,000 or less. Purchases above the micro-purchase threshold shall comply with all applicable statutory and regulatory requirements, including the following:

(i) Small business set-aside (see FAR 13.105).

(ii) Representations and certifications. The applicable items from the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items shall be obtained for commercial or noncommercial purchases. This information may be obtained orally from vendors.

(iii) Maximum practicable competition (see FAR 13.106–2(a)(3)).

(iv) Implementation of the applicable contract clauses. This requirement may be satisfied by forwarding a completed SF 1449, appropriately modified to reflect purchase card terms, to the awardee after placing the order via the card, provided that the awardee must be notified of, and agree to, the applicability of the SF 1449 clauses when the order is placed.

(f) For purchases up to the simplified acquisition threshold, the Governmentwide commercial purchase card may be used to order and pay for purchases under FAR Part 8 procedures and under the contracts listed in FAR 13.103(f).

(j) Fixed-price purchase orders shall be used for all awards made under simplified acquisition procedures except as provided under the unpriced purchase order method in FAR 13.502.

1813.106–2 Purchases exceeding the micro-purchase threshold. (NASA supplements paragraph (d))

(d)(2) For purchases up to $50,000, documentation shall be limited to a brief notation in the file indicating the rationale for selecting other than the lowest priced offer.

Subpart 1813.2—Blanket Purchase Agreements

1813.202 Establishment of blanket purchase agreements (BPAs). (NASA supplements paragraph (e))

(e)(1)(v) Non-GS–1102 or –1105 personnel shall not be authorized to place individual orders under a BPA in an amount greater than $5,000.

Subpart 1813.5—Purchase Orders

1813.501 General. (NASA supplements paragraph (a))

(a) See 1813.103(j).

1813.501–70 Purchase orders under section 8(a) of the Small Business Act.

Fixed-price purchase orders made using simplified acquisition procedures are authorized for 8(a) acquisitions under the simplified acquisition threshold.

1813.505 Purchase order and related forms. (NASA supplements paragraphs (a) and (b))

(a)(2) Installations may use locally prescribed forms.

(3) Installations may use locally prescribed forms.

(b)(1)(i) The SF 44 may be used for purchases of aviation fuel and oil of $10,000 or less.

Subpart 1813.70—Governmentwide Commercial Purchase Card

1813.7000 General.

The General Services Administration (GSA) manages the Governmentwide commercial purchase card program. Purchases made with the card shall comply with the instructions and procedures issued by GSA as well as the applicable parts of the FAR and the NFS. Centers shall establish and maintain the administrative procedures and management controls required by GSA.

1813.7001 Cardholders.

(a) The procurement officer shall designate individual cardholders in accordance with center procedures, subject to the following limitations:

(1) Cardholders for purchases greater than $2,500 shall be contracting officers appointed in accordance with FAR 1.6 and 1801.603.

(2) Personnel other than contracting officers may be designated as cardholders for purchases of $2,500 or less provided they complete training adequate to ensure appropriate use of the purchase card.

(b) The procurement officer's designation shall be in writing and shall specify the scope of the cardholder's authority.

1813.7002 Purchase card documentation.

Documentation of purchases shall be minimized. For transactions below the mirco-purchase threshold, the card holder shall maintain a brief log of purchases and a file of monthly purchase card statements indicating whether item receipt has occurred. For purchases above the micro-purchase threshold, see 1813.106–2(d)(2).

1813.7003 Approving official.

The approving official is the individual who reviews and approves a chardholder's monthly statement of purchases. The approving official shall be the cardholder's immediate or higher level supervisor; in no case shall cardholders approve their own purchases. Unless center procedures otherwise provide for their designation, the procurement officer shall designate approving officials.

1813.7004 Program officials.

(a) The Headquarters Office of Procurement (Code HC) is the agency program coordinator.

(b) The procurement officer shall identify the center program coordinator and the center billing office point of contract, and provide their names to the agency program coordinator.

PART 1814—SEALED BIDDING

Subpart 1814.2—Solicitation of Bids

Sec.
1814.201 Preparation of invitations for bids.
1814.201–5 Part IV—Representations and instructions.
1814.201–6 Solicitation provisions.
1814.201–670 NASA solicitation provisions.

Subpart 1814.3—Submission of Bids

1814.302 Bid submission

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.
1814.404–1 Cancellation of invitations after opening.
1814.407 Mistakes in bids.
1814.407–3 Other mistakes disclosed before award.

1814.407–4 Mistakes after award.
1814.408 Award.
1814.408–1 General.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47079, Sept. 6, 1996, unless otherwise noted.

Subpart 1814.2—Solicitation of Bids

1814.201 Preparation of invitations for bids.

1814.201–5 Part IV—Representations and instructions. (NASA supplements paragraph (c))

(c) Section M, Evaluation factors for award.

(i) The contracting officer shall state if award is to be made in the aggregate (all-or-non basis) or by specified groups of items.

(ii) if bidders are required to have special technical qualifications because of the complexity of the equipment being purchased or for some other reason, the contracting officer shall state those qualifications.

1814.201–6 Solicitation provisions.

1814.201–670 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.214–70, Caution to Offerors Furnishing Descriptive Literature, in invitations for bids. See FAR 52.214–21, Descriptive Literature.

(b) The contracting officer shall insert the provision at 1852.214–71, Grouping for Aggregate Award, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of certain items. Insert the item numbers and/or descriptions applicable for the particular procurement.

(c) The contracting officer shall insert the provision at 1852.214–72, Full Quantities, in invitations for bids, except for construction, when it is in the Government's best interest not to make award for less than the full quantities solicited.

(d) If a pre-bid conference is planned, the contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference. See 1815.407–70(d).

Subpart 1814.3—Submission of Bids

1814.302 Bid submission. (NASA supplements paragraph (b))

(b) NASA contracting officers shall not consider telegraphic bids communicated by the telephone.

Subpart 1814.4—Opening of Bids and Award of Contract

1814.404 Rejection of bids.

1814.404–1 Cancellation of invitations after opening. (NASA supplements paragraphs (c) and (e))

(c) The authority to make the determination at FAR 14.404–1(c) is delegated to the contracting officer, except as provided in paragraph (e)(1) of this subsection.

(e)(1) A determination that includes an authorization to complete the acquisition through negotiation shall be made by the procurement officer, in consultation with the chief counsel.

1814.407 Mistakes in bids.

1814.407–3 Other mistakes disclosed before award. (NASA supplements paragraph (e))

(e) Procurement officers are authorized to make the determinations under 14.407–3 (a), (b), (c) and (d).

1814.407–4 Mistakes after award. (NASA supplements paragraph (d))

(d) Determinations shall be made by the procurement officer.

1814.408 Award.

1814.408–1 General.

(1) A notice of award as a specific document is used when the contracting officer needs to inform a responsible bidder that its offer was determined to be the most advantageous to the Government (considering only price and price-related factors) and that the formal award will be made upon satisfaction of specified pre-performance conditions.

(2) The notice of award is not a contractual instrument. It does not authorize the successful bidder to perform and, in itself, does not obligate the Government to award a contractual document. Its limited purpose is to provide: evidence of the Government's selection of the successful bidder; instruction to that bidder to satisfy specified pre-performance conditions; and a statement that the Government intends to award the contract to the successful bidder upon satisfaction of these conditions if a contract is awarded as a result of the invitation for bids.

(3) Use of a notice of award is optional. The contracting officer may issue the award document itself without first issuing a notice of award. However, there are instances when a notice of award should be considered, for example, in construction contracts where performance or payment bonds are required. In such cases, the most cost effective technique is to require only the successful bidder to provide the necessary bonds. The notice of award advises the successful bidder to provide the bonds, and it also serves as formal evidence from the Government of the impending award if such evidence is required to secure the bonds.

(4) The notice of award shall not be issued unless bids have been evaluated and a selection made, and a definitive contract document is ready for execution upon satisfaction of the conditions specified in the notice. Upon satisfaction of these conditions, the approved and executed contract instrument shall be provided to the successful bidder.

(5) Since the notice of award is not a contractual document authorizing performance, the period of performance of the resultant contract shall not be based on the date of issuance or receipt of the notice of award. The period of performance specified in the contract shall be based on some other reference point, such as the date the contract is provided to the successful bidder, a mutually agreeable effective date of a later authorization to proceed date.

(6) The notice of award can be issued by any formal written means such as a letter, telegram or electronic means. The notice should be substantially the same as the following format.

Format

Subject: Notice of Award—Invitation for Bids (IFB) (a). This notice is to advise you that your bid (b) in response to the subject IFB has been determined to be the most advantageous to the Government (considering only price and price-related factors). It is the Government's intention to award you a contract in the amount of (c) for this effort pending satisfaction of the following pre-performance conditions: (d)

Evidence (e) of satisfaction of these conditions must be provided to the contracting officer by (f). In the event these conditions are not satisfied by this date, the Government reserves the right to award the contract to the bidder who submitted the next most advantageous bid.

Please note that this notice of award is not a contractual document. It does not obligate the Government to award you, or any other bidder, a contract relative to the subject IFB, and it does not authorize you to proceed with contract performance or incur costs pursuant to such performance. Any costs incurred for contract performance prior to your receipt of a fully executed contract document are at your own risk and are not recoverable under any Government contract should the Government fail, for whatever reason, to award you a contract in response to the subject IFB.

If a contract is awarded after evidence of satisfaction of the pre-performance conditions listed above is provided to the contracting officer by the specified due date, the date of commencement of work will be provided with the formal award. This date will be based on (g).

NOTES.—The contracting officer shall insert, where shown, the following information:

(a) Identification of the IFB by number and title.

(b) Identification of the contractor's bid.

(c) The award price.

(d) The preperformance conditions (e.g., any required payment and performance bonds).

(e) The evidence required to satisfy the pre-performance conditions (e.g., the actual payment and performance bonds).

(f) The date by which the evidence must be provided to the contracting officer.

(g) Identification of the date for commencement of performance. The period of performance of the contract shall not be based on the date of issuance or receipt of the notice of award. It shall be based on the date the contract is provided to the successful bidder, a mutually agreeable effective date, or a later authorization to proceed date.

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

Sec.
1815.405 Solicitations for information or planning purposes.
1815.405–70 Draft requests for proposals.
1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).
1815.406–2 Part I—The Schedule.
1815.406–5 Part IV—Representations and instructions.
1815.406–70 Page limitations.
1815.406–71 Installation reviews.
1815.406–72 Headquarters reviews.
1815.407 Solicitation provisions.
1815.407–70 NASA solicitation provisions.
1815.408 Issuing solicitations.
1815.408–70 Blackout notices.
1815.412 Late proposals, modifications, and withdrawals of proposals.
1815.412–70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.
1815.413 Disclosure and use of information before award.
1815.413–2 Alternate II.
1815.413–270 Appointing non-Government evaluators as special Government employees.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy.
1815.503 General.
1815.504 Advance guidance.
1815.506 Agency procedures.
1815.506–70 Relationship of unsolicited proposals to NRAs.
1815.508 Prohibitions.
1815.508–70 NASA prohibitions.
1815.509 Limited use of data.
1815.509–70 Limited use of proposals.
1815.570 Foreign proposals.

Subpart 1815.6—Source Selection

1815.601 Definitions.
1815.602 Applicability.
1815.605–70 Evaluation factors and subfactors.
1815.605–71 Source selection evaluation plan.
1815.608 Proposal evaluation.
1815.608–70 Identification of unacceptable proposals.
1815.608–71 Evaluation of a single proposal.
1815.609 Competitive range.
1815.610 Written or oral discussions.
1815.611 Best and Final Offers.
1815.612 Formal source selection.
1815.612–70 NASA formal source selection.

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.
1815.706 Evaluation, negotiation, and agreement.
1815.708 Contract clause.
1815.708–70 NASA contract clause.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data and information other than cost or pricing data.
1815.804–1 Prohibition on obtaining cost or pricing data.
1815.804–170 Acquisitions with the Canadian Commercial Corporation (CCC).
1815.804–2 Requiring cost or pricing data.
1815.805–5 Field pricing support.
1815.807 Pre-negotiation objectives.
1815.807–70 Content of the pre-negotiation position memorandum.
1815.807–71 Installation reviews.
1815.807–72 Headquarters reviews.
1815.808 Price negotiation memorandum.

Subpart 1815.9—Profit

1815.902 Policy.
1815.903 Contracting officer responsibilities.
1815.970 NASA structured approach for profit or fee objective.
1815.970–1 General.
1815.970–2 Contractor effort.
1815.970–3 Other factors.
1815.970–4 Facilities capital cost of money.
1815.971 Payment of profit or fee under letter contracts.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1004 Notification to successful offeror.
1815.1006 Postaward debriefing offerors.
1815.1006–70 Debriefing of offerors—Major System acquisitions.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Synopses of solicitations and contracts.
1815.7003 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 3465, Jan. 23, 1997, unless otherwise noted.

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

1815.405 Solicitations for information or planning purposes.

1815.405–70 Draft requests for proposals.

(a) Except for acquisitions described in 1815.602(b), contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(b) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(c) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(d) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(e) The procurement officer may waive the requirement for a DFRP upon written determination that the expected benefits will not be realized given the nature of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1815.406–2 Part I—The Schedule. (NASA supplements paragraph (c))

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

1815.406–5 Part IV—Representations and instructions. (NASA supplements paragraph (b))

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision. Although offerors should be provided the maximum flexibility in developing their proposals, contracting officers shall specify any information and standard formats required for the efficient and impartial evaluation of proposals.

1815.406–70 Page limitations.

(a) Technical and contracting personnel will mutually agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½″×11″, with at least one inch margins on all sides, using not smaller than 12 characters per inch or equivalent type. Foldouts count as an equivalent number of 8½″×11″ pages. The metric standard format most closely approximating the described standard 8½″×11″ size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will mutually agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of contents, and cost/price information, shall not exceed 500 pages using the page definition of 1815.406–70(a). Firm page limitations shall also be established for Best and Final Offers (BAFOs), if requested. The appropriate BAFO page limitations should be determined by considering the complexity of the acquisition

and the extent of any written or oral discussions. The same BAFO page limitations shall apply to all offerors. Pages submitted in excess of the specified limitations for the initial proposal and BAFO will not be evaluated by the Government and will be returned to the offeror.

1815.406–71 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting, called a Solicitation Review Board (SRB), as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.612–70, the SEB shall review and approve the RFP prior to issuance.

1815.406–72 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology that are not included in the RFP itself should also be provided.

1815.407 Solicitation provisions. (NASA supplements paragraphs (c) and (d))

(c)(6) The provision at FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals shall not be used in solicitations for the Small Business Innovation Research (SBIR) or Small Business Technology Transfer Programs, or for broad agency announcements listed in 1835.016. See instead 1815.407–70(a).

(d)(4) The contracting officer shall insert FAR 52.215–16 Alternate II in all competitive negotiated solicitations.

1815.407–70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), in lieu of the provision at FAR 52.215–10 in Announcements of Opportunity and in Small Business Innovation Research (SBIR) and Small Business Technology Transfer solicitations. (See 1815.412.)

(b) The contracting officer shall insert a provision substantially as stated at 1852.215–74, Alternate Proposals, in competitive requests for proposals if receipt of alternate proposals would benefit the Government.

(c) The contracting officer shall insert the provision at 1852.215–75, Expenses Related to Offeror Submissions, in all requests for proposals.

(d) The contracting officer shall insert the provision at 1852.215–77, Pre-proposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a pre-proposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(e) The contracting officer shall insert the clause at 1852.214–71, Grouping for Aggregate Award, in solicitations when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of items. Insert the item numbers and/or descriptions applicable for the particular acquisition.

(f) The Contracting Officer shall insert the clause at 1852.214–72, Full Quantities, in solicitations when award will be made only on the full quantities solicited.

(g) The Contracting Officer shall insert the provision at 1852.214–81, Proposal Page Limitations, in all competitive requests for proposals.

(h) The Contracting Officer shall insert the provision at 1852.215–82, Offeror Oral Presentations, in competitive requests for proposals when the Government intends to allow offerors to make oral presentations prior to commencement of the Government's formal evaluation.

1815.408 Issuing solicitations.

1815.408.70 Blackout notices.

(a) Upon release of the formal RFP, the Contracting Officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the Contracting Officer or other authorized representative. This procedure is commonly known as a ''blackout notice'' and shall not be imposed prior to release of the RFP. The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(b) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal offeror proprietary data.

1815.412 Late proposals, modifications, and withdrawals of proposals.

1815.412–70 Broad agency announcements (BAAs), Small Business Innovative Research (SBIR), and Small Business Technology Transfer (STTR) solicitations.

For BAAs listed in 1835.016, SBIR Phase I and Phase II solicitations, and STTR solicitations—

(a) Proposals, or modifications to them, received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the submission of the late proposal or modification, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering the proposal.

(b) The selection official or a designee shall determine whether to consider the proposal.

(c) Offerors may withdraw proposals any time before award, provided the conditions in paragraph (b) of the provision at 1852.215–73, Late Submissions, Modifications, and Withdrawals of Proposals (AO, SBIR, and STTR Programs), are satisfied.

1815.413 Disclosure and use of information before award.

1815.413–2 Alternate II. (NASA supplements paragraphs (a), (e), and (f))

The alternate procedures at FAR 15.413–2 shall be used for NASA acquisitions in lieu of those prescribed at FAR 15.413–1. These procedures, as implemented by this section, apply both before and after award.

(a) During evaluation proceedings, NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(e) The notice at FAR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.402 regarding release of the names of firms submitting offers.)

(f)(i) Except as provided in paragraph (f)(ii) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. This authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(ii) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for overall conduct of the evaluation. The determination of nonavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(A) NASA Announcements of Opportunity proposals;

(B) Unsolicited proposals;

(C) NASA Research Announcement proposals;

(D) SBIR and STTR proposals.

(iii) The written approvals required by paragraphs (f) (i) and (ii) of this section shall be provided to the contracting officer before the release of the proposal information. As a minimum, the approval shall:

(A) Identify the precise proposal information being released;

(B) Identify the person receiving the proposal information and evidence of their appointment as a special government employee or a statement of the applicable exception (see 1815.413–270);

(C) Provide a justification of the need for disclosure of the proposal information to the non-Government evaluator(s); and

(D) Provide a statement that a signed ''Agreement and Conditions for Evaluation of Proposals,'' in accordance with paragraph (f)(2) of this section, will be obtained prior to release of the proposal to the evaluator.

(iv) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (f)(i) and (f)(ii) of this section.

(f)(2) The NASA official approving the disclosure of any proposal information to a non-Government evaluator, including employees of JPL, shall, prior to such disclosure, require each non-Government evaluator to sign the following ''Agreement and Conditions for Evaluation of Proposals.''

AGREEMENT AND CONDITIONS FOR EVALUATION OF PROPOSALS (OCTOBER 1996)

(1) The recipient agrees to use proposal information for NASA evaluation purposes only. This limitation does not apply to information that is otherwise available without restrictions to the Government, another competing contractor, or the public.

(2) The recipient agrees that the NASA proposal cover sheet notice (FAR 15.413–2(e) and NFS 1815.413–2(e)), and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstract of any proposal information furnished.

(3) Upon completion of the evaluation, the recipient agrees to return all copies of proposal information or abstracts, if any, to the NASA office that initially furnished the proposal information for evaluation.

(4) Unless authorized in writing by the NASA official releasing the proposal information, the recipient agrees not to contact either the business entities originating the proposals or any of their employees, representatives, or agents concerning any aspect of the proposal information or extracts covered by this agreement.

(5) The recipient agrees to review his or her financial interests relative to the entities whose proposal information NASA furnishes for evaluation. At any time the recipient becomes aware that he or she or a person with a close personal relationship (household family members, business partners, or associates) has or acquires a financial interest in the entities whose proposal information is subject to this agreement, the recipient shall immediately advise the NASA official releasing the proposal information, protect the proposal information, and cease evaluation activities pending a NASA decision resolving the conflict of interest.

Signature: _____

Name typed or printed: _____

Date: _____

[End of agreement]

1815.413–270 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government participants in proposal evaluation proceedings, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a Special Government employee is a separate action from the approval required by paragraph 1815.413–2(f) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The Field Installation personnel office when the release of proposal information is to be made by the Field Installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) NASA Announcements of Opportunity proposals;

(2) Unsolicited proposals;

(3) NASA Research Announcement proposals; and

(4) SBIR and STTR proposals.

Subpart 1815.5—Unsolicited Proposals

1815.502 Policy. (NASA supplements paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, a grant, a cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.503 General. (NASA supplements paragraph (e))

(e) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

1815.504 Advance guidance. (NASA supplements paragraph (b))

(b) The Headquarters Office of Procurement (Code HK) is responsible for preparing for public use a brochure titled ''Guidance for the Preparation and Submission of Unsolicited Proposals,'' which shall be provided without charge by the Office of Procurement and other NASA officials in response to requests for proposal submission information. A deviation is required for use of any modified or summarized version of the brochure or for alternate means of general dissemination of unsolicited proposal information. Code HK is responsible for internal distribution of the brochure.

1815.506 Agency procedures. (NASA supplements paragraph (a))

(a)(i) NASA Headquarters and each NASA field installation shall designate an organizational entity as its unsolicited proposal coordinating office for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the coordinating office to the proper installation. Field installation coordinating offices are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Coordinating offices shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (larger business, small business, university, or nonprofit institution).

1815.506–70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016–70), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

1815.508 Prohibitions. (NASA supplements paragraph (b))

(b) FAR 15.508(b) shall not apply to NASA; see instead 1815.508–70.

1815.508–70 NASA prohibitions.

Information (data) in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with procedures in, FAR 15.413–2 and 1815.413–2. Any other disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

[62 FR 3465, Jan. 23, 1997, as amended at 62 FR 36706, July 9, 1997]

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509–70.

1815.509–70 Limited use of proposals.

(a) The provision at FAR 52.215–12, Restriction on Disclosure and Use of Data, is applicable to unsolicited proposals.

(b) If an unsolicited proposal is received with a more restrictive legend than made applicable by paragraph (a) of this section, the procedures of FAR 15.413–2(c) apply.

(c) Upon receipt in the coordinating office, the Government notice in FAR 15.413–2(e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with the procedures prescribed in, FAR 15.413–2(f) and 1815.413–2.

(e) If a request is made under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413–2(g) apply.

1815.570 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

Subpart 1815.6—Source Selection

1815.601 Definitions. (NASA supplements paragraphs (1) and (2))

(1) The source selection authority (SSA) is the Agency official responsible for proper and efficient conduct of the source selection process and for making the final source selection decision. The SSA has the following responsibilities:

(i) Approve the evaluation factors, subfactors, and elements, the weight of the evaluation factors and subfactors, and any special standards of responsibility (see FAR 9.104–2) prior to release of the RFP, or delegate this authority to appropriate management personnel;

(ii) Appoint the source selection team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team; and

(iii) Provide the source selection team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(2) The SSA shall be established at the lowest reasonable level for each acquisition. For acquisitions designated as Headquarters selections, the SSA will be identified as part of the Master Buy Plan process (see 1807.71).

1815.602 Applicability. (NASA supplements paragraphs (a) and (b))

(a)(i) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted as follows:

(A) Acquisitions of $50 million or more—in accordance with FAR 15.6 and this subpart.

(B) Other acquisitions—in accordance with FAR 15.6 and this subpart except section 1815.612–70.

(ii) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15.6 and this subpart are not applicable to acquisitions conducted under the following procedures:

(i) MidRange (see part 1871).

(ii) Announcements of Opportunity (see part 1872).

(iii) NASA Research Announcements (see 1835.016–70).

(iv) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(v) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

1815.605–70 Evaluation factors and subfactors.

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Relevant Experience and Past Performance. Evaluation factors may be further defined by subfactors. Although discouraged, subfactors may be further defined by elements. Evaluation subfactors and any elements should be structured to identify significant discriminators, or ''key swingers''—the essential information required to support a source selection decision. Too many subfactors and elements undermine effective proposal evaluation. All evaluation subfactors and any elements should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.608(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to four. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) Although discouraged, elements that further define the content of each subfactor may be identified. Elements, if used, shall not be numerically weighted and scored. The total number of elements is limited to eight. Any Mission Suitability elements shall be identified in the RFP.

(4) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Million Suitability scores.

(c) *Cost/Price factor.* This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs, prices. The Cost/Price factor is not numerically weighted or scored.

(d) *Relevant Experience and Past Performance factor.* (1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition. The Relevant Experience and Past Performance factor is not numerically weighted or scored.

(2) The RFP shall instruct offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that can be used to evaluate their relevant experience and past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those received in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems and terminations.

(3) The Contracting Officer may start collecting past performance data prior to proposal receipt. One method for initiating the past performance evaluation early is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for

offerors to send their previous customers with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

1815.605–71 Source selection evaluation plan.

(a) A source selection evaluation plan shall be prepared for each source selection. The plan shall include, as a minimum the general and specific evaluation guidelines (and special standards of responsibility, where applicable) established to assess each offeror's proposal against the RFP evaluation factors, subfactors, and elements. The evaluation guidelines are designed to focus the evaluators' assessment. They are not weighted and are not listed in the RFP. However, the substance of the guidelines may be included in a narrative description of the subfactors and elements. In addition, the plan includes the system used in conducting the evaluation (and scoring, if applicable) of each offeror's proposal.

(b) The source selection evaluation plan shall be approved by the source selection authority or other personnel designated in accordance with installation procedures before the formal RFP is issued.

(c) For formal source selections, see 1815.612(c).

[62 FR 14017, Mar. 25, 1997]

1815.608 Proposal evaluation. (NASA supplements paragraphs (a) and (b))

(a) Each proposal shall be evaluated to identify and document:

(i) Any failures to meet any terms and conditions of the RFP;

(ii) All strengths and weaknesses, classified as major or minor to further underscore discriminators among proposals;

(iii) The numerical score and/or adjectival rating of each Mission Suitability subfactor and for the Mission Suitability factor in total;

(iv) Cost realism, if appropriate;

(v) The adjectival rating of the Relevant Experience and Past Performance evaluation factor; and

(vi) Any technical, schedule, and cost risk. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, etc., or as a result of the cost, schedule and performance impacts associated with these approaches. Risk evaluations must consider the probability of success, the impact of failure, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths; weaknesses and numerical/adjectival ratings. Identified risk areas and the potential for cost impact shall be considered in the cost or price evaluation.

(1) Cost or price evaluation.

(A) In accordance with 1815.804–1, cost or pricing data shall not be requested in competitive acquisitions. Only the minimal information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested.

(B) When contracting on a firm fixed price basis, the contracting officer shall not request any cost information, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

(C) When contracting on a basis other than firm fixed price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. The analysis should include:

(*a*) The probable cost to the Government of each proposal, including any recommended additions or reductions in materials, equipment, labor hours, direct rates and indirect rates. The probable cost should reflect the best estimate of the cost of any contract which might result from the offeror's proposal.

(*b*) The differences in business methods, operating procedures, and practices as they impact cost.

(*c*) A level of confidence in the probable cost assessment for each proposal.

(D) The cost realism analysis may result in adjustments to Mission Suitability scores in accordance with the procedure described in 1815.608(a)(3)(B).

(E) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(a)(2) Past performance evaluation.

(A) The Relevant Experience and Past Performance evaluation assesses the contractor's performance under previously awarded contracts. It should evaluate the company, not the individuals, involved with contract performance. Relevant Experience and Past Performance is not numerically scored, but is assigned an adjectival rating.

(B) The evaluation may be limited to specific areas of past performance considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors in that acquisition.

(C) The evaluation may consider past performance data provided by offerors and data from other sources. Questionnaires and interviews may be used to solicit assessments of the offeror's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and included in the evaluation.

(a)(2) (iii) Firms without relevant experience or a past performance record shall not be given a proposal deficiency or weakness (see 1815.610) and shall be given a neutral rating. If the adjectival rating system of 1815.608(a)(3)(A) is used for the Relevant Experience and Past Performance factor, a rating of ''Good'' shall be assigned in such cases.

(3) Technical Evaluation.

(A) Mission Suitability subfactors and the total Mission Suitability factor shall be evaluated using the following adjectival ratings, definitions and percentile ranges.

Adjectival rating	Definitions	Percentile range
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more major strengths. No weaknesses or only minor weaknesses exist.	91–100
Very Good	A proposal which demonstrates overall competence. One or more major strengths have been found, and strengths outbalance any weaknesses that exist.	71–90
Good	A proposal which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response.	51–70
Fair	A proposal that has one or more weaknesses. Weaknesses have been found that outbalance any strengths that exist.	31–50
Poor	A proposal that has one or more major weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to address..	0–30

(B) When contracting on a cost reimbursement basis, the Mission Suitability evaluation shall reflect the results of any required cost realism analysis performed under the cost/price factor. A structured approach shall be used to adjust Mission Suitability scores based on the degree of assessed cost realism. An example of such an approach would:

(*a*) Establish a threshold at which Mission Suitability adjustments would start. The threshold should reflect the acquisition's estimating uncertainty (i.e., the higher the degree of estimating uncertainty, the higher the threshold);

(*b*) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(*c*) Affect a significant number of points in order to encourage realistic pricing.

(*d*) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardward development	Point adjustment
+/− 5 percent	+/− 30 percent	0
+/− 6 to 10 percent	+/− 31 to 40 percent	−50
+/− 11 to 15 percent	+/− 41 to 50 percent	−100
+/− 16 to 20 percent	+/− 51 to 60 percent	−150
+/− 21 to 30 percent	+/− 61 to 70 percent	−200
+/− more than 30 percent.	+/− more than 70 percent.	−300

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

§ 1815.608–70 Identification of unacceptable proposals.

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address itself to the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

1815.608–71 Evaluation of a single proposal.

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the Source Selection Authority shall direct the contracting officer to:

(1) Award without discussions provided the contracting officer determines that adequate price competition exists (see FAR 15.804–1(b)(1)(ii));

(2) Award after negotiating a mutually acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.804–1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.608–71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

1815.609 Competitive range. (NASA supplements paragraphs (a))

(a) Proposals shall not be included in the competitive range when they do not have a reasonable chance of selection. To reduce unnecessary expense to both offerors and NASA, a total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

1815.610 Written or oral discussions. (NASA supplements paragraph (c))

(c)(2)(A) The contracting officer shall identify, and give offerors a reasonable opportunity to address, all weaknesses that have an adverse impact on the evaluation. Weaknesses are defined as deficiencies (see FAR 15.601) and other proposal inadequacies. Weaknesses may include all proposal areas that are inadequate for evaluation, contain contradictory statements, or strain credibility. However, minor irregularities, informalities, or apparent clerical mistakes are not considered weaknesses. They may be identified to offerors through the clarification technique defined in FAR 15.601, rather than discussions as contemplated in this section.

(B) The contracting officer shall advise an offeror if, during written or oral discussions, an offeror introduces

a new weakness. The offeror can be advised during the course of the discussions or as part of the request for BAFO.

(C)The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer should question inadequate, conflicting, unrealistic or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a ''bottom line'' is necessary.

(c)(3)(A) The contracting officer shall discuss contract terms and conditions so that a ''model'' contract can be sent to each offeror with the request for BAFO. Any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's ''model'' contract. These items are not to be discussed with, or proposed to, other offerors. If the offeror declines to include these strengths in its ''model'' contract, the Government evaluators should reconsider their characterization as strengths.

(B) In no case shall the contracting officer relax or amend RFP requirements for any offeror, without amending the RFG and permitting the other offerors an opportunity to propose against the relaxed requirements.

1815.611 Best and Final Offers. (NASA supplements paragraphs (b), (c) and (d))

(b) The request for BAFOs shall also:

(i) Identify for any remaining weaknesses.

(ii) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(iii) Require offerors to complete and execute the ''model'' contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(iv) Caution offerors against unsubstantiated changes to their proposals; and

(v) Establish a page limit for BAFOs.

(c)(i) Approval of the Associate Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of $50 million or more.

(ii) Approval of the procurement officer is required for all other acquisitions.

(d)(i) Proposals are rescored based on BAFO evaluations. Scoring changes between initial and BAFO proposals shall be clearly traceable.

(ii) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings and scores, including a detailed account of the decisions leading to the selection. Selection is made on the basis of the evaluation criteria established in the RFP.

(iii) Prior to award, the SSA shall sign a source selection statement that clearly and succinctly justifies the selection. Source selection statements must describe: The acquisition; the SEB evaluation procedures; the substance of the Mission Suitability evaluation; and the evaluation of the Cost/Price and Relevant Experience and Past Performance factors. The statement also addresses unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The statement shall not reveal any confidential business information. Except for certain major system acquisition competitions (see 1815.1006–70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement shall be available to the Debriefing Official to use in postaward debriefing of unsuccessful offerors and shall be provided to debriefed offerors upon request.

(iv) Once the selection decision is made, the contracting officer shall,

without post-selection negotiations, award the contract.

[62 FR 3465, Jan. 23, 1997, as amended at 62 FR 36706, July 9, 1997]

1815.612 Formal source selection. (NASA supplements paragraph (c))

(c) The requirement for a source selection evaluation plan may be satisfied by incorporating the information required by 1815.605–71 into the source selection plan. The consolidated plan shall be approved by the source selection authority.

[62 FR 14017, Mar. 25, 1997]

1815.612–70 NASA formal source selection.

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.602(a)(i)(A).

(b) General. The SEB assists the SSA in decisionmaking by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

(c) Designation. (1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the solicitation. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with NFS 1815.413–2.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement (Code HS) must concur on the SEB appointments. Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided.

(d) Organization. (1) The organization of an SEB is tailored to the requirements of the particular acquisition. This can range from the simplest situation, where the SEB conducts the evaluation and fact-finding without the use of committees or panels/consultants (as described in 1815.612–70(d) (4) and (5)), to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or consultants in particular areas. The number of committees or panels/ consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a fact-finding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors, subfactors, and elements, and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a fact-finding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a

maximum of 20 people, unless approved in writing by the procurement officer.

(e) Voting members. (1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of a NASA SEB.

(3) The SEB shall review the findings of committees, panels or consultants and use its own collective judgment to develop the SEB evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of 7 voting individuals. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not feasible, SEB membership shall take precedence over other duties.

(5) The following people shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) An experienced procurement representative.

(iv) A senior Safety & Mission Assurance (S&MA) representative, as appropriate.

(v) Committee chairpersons (except where this imposes an undue workload).

(f) Ex officio members.

(1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in 1815.612–70(f)(3) is discouraged.

(2) Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions.

(3) For field installation selections, the following shall be nonvoting ex officio members on all SEBs:

(i) Chairpersons of SEB committees, unless designated as voting members.

(ii) The procurement officer of the installation, unless designated a voting member.

(iii) The contracting officer responsible for the acquisition, unless designated a voting member.

(iv) The Chief Counsel and/or designee of the installation.

(v) The installation small business specialist.

(vi) The SEB recorder.

(g) Evaluation. (1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) A statement for each proposal describing any strengths or weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment, consistent with the approved evaluation plan. SEB minutes shall reflect this evaluation process.

(h) SEB presentation. (1) The SEB Chairperson shall brief the SSA on the

results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the major strengths and weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors, subfactors, and elements; the major strengths and weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall:

(i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

(ii) Not change the established evaluation factors, subfactors, elements, weights, or scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the Field Installation Director and to the Official-in-Charge of the cognizant headquarters Program Office.

(i) *Recommended SEB presentation format*—(1) *Identification of the acquisition.* Identifies the installation, the nature of the services or hardware to be procured, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) *Background.* Identifies any earlier phases of a phased acquisition or, as in the case of the continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation factors, subfactors, and elements.* Explains any special standards of responsibility and the evaluation factors, subfactors, and elements. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Relevant Experience and Past Performance evaluations.

(4) *Sources.* Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals, indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) *Summary of findings.* Lists the initial and final Mission Suitability ratings and scores, the offerors' proposed costs/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) *Strengths and weaknesses of offerors.* Summarizes the SEB's findings, using the following guidelines:

(i) Present only the major strengths and weaknesses of individual offerors.

(ii) Directly relate the strengths and weaknesses to the evaluation factors, subfactors, and elements.

(iii) Indicate the significance of major strengths and weaknesses.

(iv) Indicate the results and impact, if any, of written and/or oral discussions and BAFOs on ratings and scores.

(7) *Final mission suitability ratings and scores.* Summarizes the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final cost/price evaluation.* Summarizes proposed costs/prices and any probable costs associated with each

offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Relevant experience and past performance.* Reflects the summary conclusions, supported by specific case data, with particular emphasis on exemplary or inferior performance and its potential bearing on the instant acquisition.

(10) *Special interest.* Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could have an effect on the selection decision.

(j) A source selection statement shall be prepared in accordance with 1815.611(d)(iii). For installation selections, the Field Installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

[62 FR 3465, Jan. 23, 1997, as amended at 62 FR 14017, Mar. 25, 1997]

Subpart 1815.7—Make-or-Buy Programs

1815.704 Items and work included.

Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.706 Evaluation, negotiation, and agreement.

(NASA supplements paragraph (b))

(b) The make-or-buy program review by the installation's small and disadvantaged business utilization specialist and the SBA representative should be concurrent with the contracting officer's review. When urgent circumstances preclude this or if the small and disadvantaged business specialist or SBA representative fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and transmit copies to the specialist and the representative.

1815.708 Contract clause.

1815.708–70 NASA contract clauses.

(a) The contracting officer shall insert the provision at 1852.215–78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.703. This provision shall be used in conjunction with the clause at FAR 52.215–21, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for ''Make-or-Buy'' Changes, in contracts that include FAR 52.215–21 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data and information other than cost or pricing data.

1815.804–1 Prohibition on obtaining cost or pricing data. (NASA supplements paragraph (b))

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception. In such cases, information other than cost or pricing data may be requested to the extent necessary to ensure price reasonableness and assess cost realism.

(5) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HC).

[62 FR 3465, Jan. 23, 1997, as amended at 62 FR 36706, July 9, 1997]

1815.804–170 Acquisitions with the Canadian Commercial Corporation (CCC).

NASA has waived the requirement for the submission of cost or pricing data when contracting with the CCC. This waiver applies through March 31,

1999. The CCC will provide assurance of the fairness and reasonableness of the proposed prices, and will also provide for follow-up audit activity to ensure that excess profits are found and refunded to NASA. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to permit any required Government cost/price analysis.

1815.804–2 Requiring cost or pricing data. (NASA supplements paragraph (b))

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of price agreement.

1815.805–5 Field pricing support. (NASA supplements paragraph (a))

(a)(1)(A) The threshold for obtaining a field pricing report for cost reimbursement contracts is $1,000,000.

(B) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(C) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(D) When the threshold for requiring field pricing support is met and the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMC ACO or DCAA.

(E) Requests for field pricing assistance may be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.

[62 FR 3465, Jan. 23, 1997, as amended at 62 FR 36706, July 9, 1997]

1815.807 Prenegotiation objectives. (NASA supplements paragraph (b))

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under the competitive negotiated procedures of FAR 15.6 and 1815.6.

[62 FR 3465, Jan. 23, 1997, as amended at 62 FR 4467, Jan. 30, 1997]

1815.807–70 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.808 and 1815.808). In addition to the information described in FAR 15.807 and, as appropriate, 15.808(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) *Introduction.* Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.808(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability.

(c) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government); and

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required.

(d) *Cost analysis.* For the basic requirement, and any option, include—

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective;

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of FAR 15.806–2(a), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, and unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, cost risk, and so forth, as applicable.

(e) *Negotiation approval sought.* The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

1815.807–71 Installation reviews.

Each contracting activity shall establish a formal system for the review of prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.807–72 Headquarters reviews.

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

1815.808 Price negotiation memorandum. (NASA supplements paragraphs (a) and (b))

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.808 shall be reflected in the evaluation and selection documentation to the extent applicable.

(b) When the PNM is a ''stand-alone'' document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide any information required by FAR 15.808 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, subcontractors; wage rate determinations; or the current status of the contractor's systems).

Subpart 1815.9—Profit

1815.902 Policy. (NASA supplements paragraph (a)).

(a)(1) The NASA structured approach for determining profit or fee objectives, described in 1815.970, shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis, except as indicated in paragraph (a)(2) of this section.

(2) The use of the NASA structured approach for profit or fee is not required for:

(A) Architect-engineer contractors;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements;

(F) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit/fee analysis as an aid in arriving at an appropriate fee arrangement); and

(G) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

1815.903 Contracting officer responsibilities. (NASA supplements paragraph (d))

(d)(1)(ii) In architect-engineer contracts, the price or estimated cost and fee for services other than the production and delivery of designs, plans, drawings, and specifications, are not subject to the 6 percent limitation set forth in FAR 15.903(d)(1).

1815.970 NASA structured approach for profit or fee objective.

1815.970–1 General.

(a) The NASA structured approach for determining profit or fee objectives is a system of assigning weights to cost elements and other factors to calculate the objective. Contracting officers shall use NASA Form 634 to develop the profit or fee objective and shall use the weight ranges listed after each category and factor on the form after considering the factors in 1815.970–2 through 1815.970–4. The rationale supporting the assigned weights shall be documented in the PPM in accordance with 1815.807–70(d)(3).

(b)(1) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach shall be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (b)(2) of this section. (It is NASA policy not to pay profit or fee on contracts with educational institutions.)

(2) For contracts with nonprofit organizations under which profits or fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(i) Tax position benefits;

(ii) Granting of financing through letters of credit;

(iii) Facility requirements of the nonprofit organization; and

(iv) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

1815.970–2 Contractor effort.

(a) This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. The suggested cost categories under this factor are for reference purposes only. The format of individual proposals will vary, but these broad categories provide a sample structure for the evaluation of all categories of cost. Elements of cost shall be separately listed under the appropriate category and assigned a weight from the category range.

(b) Regardless of the categories of cost defined for a specific acquisition, neither the cost of facilities nor the amount calculated for the cost of money for facilities capital shall be included as part of the cost base in column 1. (a) in the computation of profit or fee.

(c) Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(1) Material acquisition (subcontracted items, purchased parts, and other material). (i) Consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and administer subcontracts, including efforts to introduce and maintain competition. These evaluations shall be performed for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard of near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In performing the evaluation, also consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor.

(ii) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit/fee evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as a single element under the material acquisition category. For other intracompany transfers, the constituent elements of cost shall be identified and weighted under the appropriate cost category, i.e., material, labor, and overhead.

(2) Direct labor (engineering, service, manufacturing, and other labor). (i) Analysis of the various items of cost should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit/fee weights, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel.

(ii) Evaluate service contract labor in a like manner by assigning higher weights to engineering, professional, or highly technical skills and lower weights to semiprofessional or other skills required for contract performance.

(iii) Similarly, the variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, subtypes of labor (for example, quality control, and receiving and inspection) proposed separately from engineering, service, or manufacturing labor should be included in the most appropriate labor type. However, the same evaluation considerations as outlined in this section will be applied.

(3) Overhead and general management (G&A). (i) Analysis of overhead and G&A includes the evaluation of the makeup of these expenses, how much they contribute to contract performance, and the degree of substantiation provided for the rates proposed in future years.

(ii) Contracting officers should also consider the historical accuracy of the

contractor's proposed overheads as well as the ability to control overhead pool expenses.

(iii) The contracting officer, in an evaluation of the overhead rate of a contractor using a single indirect cost rate, should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and apply the appropriate weight.

(4) Other costs. Include all other direct costs associated with contractor performance under this item, for example, travel and relocation, direct support, and consultants. Analysis of these items of cost should include their nature and how much they contribute to contract performance.

1815.970–3 Other factors.

(a) *Cost risk*. The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. This factor is one of the most important in arriving at prenegotiation profit/fee objectives.

(1) Other risks on the part of the contractor, such as loss of reputation, losing a commercial market, or losing potential profit/fee in other fields, shall not be considered in this factor. Similarly, any risk on the part of the contracting office, such as the risk of not acquiring an effective space vehicle, is not within the scope of this factor.

(2) The degree of cost responsibility assumed by the contractor is related to the share of total contract cost risk assumed by the contractor through the selection of contract type. The weight for risk by contract type would usually fall within the 0-to-3 percent range for cost-reimbursement contracts and 3-to-7 percent range for fixed-price contracts.

(i) Within the ranges set forth in paragraph (a)(2) of this section, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(ii) The range for fixed-price type contracts is wide enough to accommodate the various types of fixed-price arrangements. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(3) The cost risk arising from contract type is not the only form of cost risk to consider.

(i) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. This consideration should be a part of the contracting officer's overall evaluation in selecting a weight to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk weight may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk weigh should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts unless those subcontract costs represent a substantial transfer of the contractor's risk.

(ii) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit/fee weight for

application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not be based solely on the portion of costs incurred, or percentage of work completed, before definitization.

(b) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the contractor's facilities and the frequency of payments.

(1) To evaluate how facilities contribute to the profit/fee objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit/fee. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a correspondingly lower profit/fee. Cases between the above examples should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit/fee objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit/fee need not be adjusted.

(2) In analyzing payments, consider the frequency of payments by the Government to the contractor and unusual payments. The key to this weighting is proper consideration of the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly.

(c) *Performance.* The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions.

(d) *Subcontract program management.* Subcontract program management includes evaluation of the contractor's commitment to its competition program and its past and present performance in competition in subcontracting. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should result in a lower profit or fee.

(e) *Federal socioeconomic programs.* In addition to rewarding contractors for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

(f) *Special situations.* (1) Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit/fee objective.

(2) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

1815.970–4 Facilities capital cost of money.

(a) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not

be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(b) CAS 417, Cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

1815.971 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

Subpart 1815.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.1004 Notification to successful offeror.

The reference to notice of award in FAR 15.1004 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed:

[62 FR 3465, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, July 9, 1997]

1815.1006 Postaward debriefing offerors.

[62 FR 36706, July 9, 1997]

1815.1006–70 Debriefing of offerors—Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

[62 FR 3465, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, July 9, 1997]

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contacting officer shall indicate that the clause at 1852.215–84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

PART 1816—TYPES OF CONTRACTS

Subpart 1816.2—Fixed-Price Contracts

Sec.
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1816.405 Cost-reimbursement incentive contracts.
1816.405–2 Cost-plus-award-fee (CPAF) contracts.
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1816.405–271 Base fee.
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Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts.
1816.505 Ordering.
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Subpart 1816.6—Time-and-Materials, Labor-House, and Letter Contracts

1816.603 Letter contracts.
1816.603–370 Approvals.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 3478, Jan. 23, 1997, unless otherwise noted.

Subpart 1816.2—Fixed-Price Contracts

1816.202 Firm-fixed-price contracts.

1816.202–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.216–78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

1816.203 Fixed-price contracts with economic price adjustment.

1816.203–4 Contract clauses. (NASA supplements paragraphs (a) and (d)).

(a) In addition to the approval requirements in the prescriptions at FAR 52.216–2 through 52.216–4, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216–2 through 52.216–4.

(d)(2) Contracting officers shall contact the Office of Procurement, Code HC, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the Associate Administrator for Procurement. Requests for approval shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1816.3—Cost-Reimbursement Contracts

1816.303–70 Cost-sharing contracts.

(a) *Cost-sharing with for-profit organizations.* (1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal, and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. In determining the amount of cost-sharing, the contracting officer shall consider the relative benefits to the contractor and the Government. Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

(b) *Cost-sharing with not-for-profit organizations.* (1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that

there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer will normally limit the institution's share to no more than 10 percent of the project's cost.

(c) *Implementation.* Cost-sharing shall be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

1816.306 Cost-plus-fixed-fee contracts. (NASA supplements paragraph (d)).

(d) *Completion and term forms.*

(4) Term form contracts are incompatible with performance base contracting (PBC) and should not be used with PBC requirements.

1816.307 Contract clauses. (NASA supplements paragraphs (a), (b), (d), and (g)).

(a) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216–7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

(b) In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(d) In solicitations and contracts containing the clause at FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

(g) In paragraph (g)(2)(ii) of the Allowable Cost and Payment—Facilities clause at FAR 52.216–13, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215–2, Audit and Records—Negotiation.

1816.307–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.216–73, Estimated Cost and Cost Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303–70.

(b) The contracting officer shall insert the clause substantially as stated at 1852.216–74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216–75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts. Modifications to the clause are authorized.

(d) The contracting officer may insert the clause at 1852.216–81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) The contracting officer may insert a clause substantially as stated at 1852.216–87, Submission of Vouchers for Payment, in cost-reimbursement solicitations and contracts.

(f) When either FAR clause 52.216–7, Allowable Cost and Payment, or FAR clause 52.216–13, Allowable Cost and Payment—Facilities, is included in the contract, as prescribed at FAR 16.307 (a) and (g), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

Subpart 1816.4—Incentive Contracts

1816.402 Application of pre-determined, formula-type incentives.

1816.402–2 Technical performance incentives.

1816.402–270 NASA technical performance incentives.

(a) A performance incentive shall be included in all contracts where the primary deliverable(s) is (are) hardware and where total estimated cost and fee is greater than $25 million unless it is determined that the nature of the acquisition (for example, commercial off-

the-shelf computers) would not effectively lend itself to a performance incentive. Any exception to this requirement shall be approved in writing by the Center Director. Performance incentives may be included in hardware contracts valued under $25 million at the discretion of the procurement officer. Performance incentives, which are objective and measure hardware performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.

(b) When a performance incentive is used, it shall be structured to be both positive and negative based on hardware performance after delivery and acceptance. In doing so, the contract shall establish a standard level of performance based on the salient hardware performance requirement. This standard performance level is normally the contract's minimum performance requirement. No incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance both above and below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, both positive and negative, and its associated unit of measurement should reflect the value to the Government of that level of hardware performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.

(c) The final calculation of the performance incentive shall be done when hardware performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor. The exclusion at FAR 16.405(e)(3) does not apply to decisions made as to the amount(s) of positive or negative incentive.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g.. multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules.

(1) The sum of the maximum positive performance incentive and other fixed or earnable fees on the contract shall not exceed the limitations in FAR 15.903(c).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee

shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

1816.405 Cost-reimbursement incentive contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405–2 Cost-plus-award-fee (CPAF) contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405–270 CPAF contracts.

(a) For purposes of this subsection, ''performance based contracting'' means effort which can be contractually defined so that the results of the contractor's effort can be objectively measured in terms of technical and quality achievement, schedule progress or cost performance. ''Nonperformance based contracting'' means contractor effort that cannot be objectively measured but is evaluated based on subjective, qualitative assessments (e.g., controlling changes or interfacing with other agencies, contractors and international organizations).

(b)(1) Normally, award fee incentives are not used when contract requirements can be defined in sufficient detail to allow for performance based contracting. If incentives are considered necessary, objectively measured incentives as described in FAR 16.402 are preferred.

(2) Award fee incentives may be used as follows:

(i) As a CPAF contract where a cost reimbursement contract is appropriate and none of the requirements can be defined to permit performance based contracting;

(ii) As a CPAF line item for nonperformance based requirements in conjunction with a non-CPAF line item(s) for performance based requirements. In this instance, fees for the performance based and nonperformance based requirements shall be developed separately IAW FAR 15–9 and 1815.9; and

(iii) Under a performance-based contract when it is determined to be necessary to motivate the contractor toward exceptional performance (see FAR 16.405–2(b)(ii)) and the increased level of performance justifies the additional administrative expense. When an award fee incentive is used in this instance, the basic contract type shall be other than CPAF (e.g., CPIF or FPIF). The potential award fee shall not be used to incentivize cost performance.

(3) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

(c) Use of an award fee incentive shall be approved in writing by the procurement officer. The procurement officer's approval shall include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives should be used on contracts with a total estimated cost and fee greater than $2 million per year. The procurement officer may authorize use of award fee for lower-valued acquisitions, but should do so only in exceptional situations, such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, July 9, 1997]

1816.405–271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405–273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final product/results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with a performance based contract structure, such as an incentive fee arrangement.

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is

''satisfactory'' or better. (See 1816.405–273 and 1816.405–275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is ''poor/unsatisfactory'', all provisional base fee payments shall be refunded to the Government.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, July 9, 1997]

1816.405–272 Award fee evaluation periods.

(a) Award fee evaluation periods should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.405–273 Award fee evaluations.

(a) Award fee evaluations are either interim or final. On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or ''rolled-over,'' into subsequent periods.

(b) On other contracts, such as those for end item deliverables where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition, interim evaluations are done to monitor performance prior to contract completion and provide feedback to the contractor on the Government's assessment of the quality of its performance. Interim evaluations are also used to establish the basis for making interim award fee payments. These interim payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payment.

(c) Provisional award fee payments, i.e., payments made within evaluation periods, may be included in the contract and should be negotiated on a case-by-case basis. The amount of the provisional award fee payment is determined by applying the lesser of the prior period's interim evaluation score (see 1816.405–275) or 80 percent of the fee allocated to the current period. The provisional award fee payments are superseded by the fee determinations made at the conclusion of each award fee performance period.

(d) The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due to the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

(e) Interim and final evaluations may be used to provide past performance information during the source selection

process and should be marked and controlled as ''Source Selection Information.''

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997]

1816.405–274 Award fee evaluation factors.

(a) Explicit evaluation factors shall be established for each award fee period.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Normally, technical and schedule considerations will be included in all CPAF contracts as evaluation factors. Cost control shall be included as an evaluation factor in all CPAF contracts. When explicit evaluation factor weightings are used, cost control shall be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government shall take such situations into consideration when evaluating contractor cost control.

(d) Emphasis on cost control should be balanced against other performance requirement objectives. The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control shall conform to the following guidelines:

(1) Normally, the contractor should be given a score of 0 for cost control when there is a significant overrun within its control. However, the contractor may receive higher scores for cost control if the overrun is insignificant. Scores should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government shall consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum score allocated for cost control, provided the average numerical rating for all other award fee evaluation factors is 81 or greater (see 1816.405–275). An underrun shall be rewarded as if the contractor has met the estimated cost of the contract (see 1816.405–274(d)(3)) when the average numerical rating for all other factors is less than 81 but greater than 60.

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum score allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award shall be given in this circumstance unless the average numerical rating for all other award fee evaluation factors is 61 or greater.

(e) When an AF arrangement is used in conjunction with a performance based contract structure (see 1816.405–270(b)(2)(iii)), the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g., CPIF, FPIF).

(f) The contractor's performance against the subcontracting plan incorporated in the contract shall also be evaluated. Small disadvantaged business utilization may be an area of particular emphasis, including the contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable. The evaluation weight given to subcontracting plan performance should be significant (up to 15 percent of

available award fee). It should motivate the contractor to focus management attention to subcontracting with small, small disadvantaged, and women-owned small business concerns to the maximum extent practicable consistent with efficient contract performance.

(g) Only the award fee performance evaluation factors set forth in the performance evaluation plan shall be used to determine award fee scores.

(h) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer shall notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997]

1816.405–275 Award fee evaluation scoring.

(a) A scoring system of 0–100 shall be used for all award fee ratings. Award fee earned is determined by applying the numerical score to the award fee pool. For example, a score of 85 yields an award fee of 85 percent of the award fee pool. No award fee shall be paid unless the total score is 61 or greater.

(b) The following standard adjectival ratings and the associated numerical scores shall be used on all award fee contracts.

(1) *Excellent* (100–91): Of exceptional merit; exemplary performance in a timely, efficient, and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.

(2) *Very good* (90–81): Very effective performance, fully responsive to contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

(3) *Good* (80–71): Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.

(4) *Satisfactory* (70–61): Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.

(5) *Poor/Unsatisfactory* (less than 61): Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

(c) As a benchmark for evaluation, in order to be rated ''Excellent,'' the contractor must be under cost, on or ahead of schedule, and have provided excellent technical performance.

(d) A scoring system appropriate for the circumstances of the individual contract requirement should be developed. Weighted scoring is recommended. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0–100 according to the ratings defined in 1816.405–275(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80×60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997]

1816.406 Contract clauses.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

1816.406–70 NASA contract clauses.

(a) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216–76, Award Fee for Service Contracts, in solicitations and contracts when a cost-plus-award-fee contract is contemplated and the contract deliverable is the performance of a service. When provisional award fee payments are authorized, use Alternate I.

(b) As authorized by FAR 16.406(e), the contracting officer shall insert the clause at 1852.216–77, Award Fee for End Item Contracts, in solicitations and

contracts when a cost-plus-award-fee contract is contemplated and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract.

(c) The contracting officer may insert a clause substantially as stated at 1852.216–83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) The contracting officer shall insert the clause at 1852.216–84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216–85, Estimated Cost and Award Fee, in cost-plus-award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I.

(f) As provided at 1816.402–270, the contracting officer shall insert a clause substantially as stated at 1852.216–88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than $25 million. A clause substantially as stated at 1852.216–88 may be included in lower dollar value hardware contracts with the approval of the procurement officer.

[62 FR 3478, Jan. 23, 1997. Redesignated and amended at 62 FR 36706, 36707, July 9, 1997]

Subpart 1816.5—Indefinite-Delivery Contracts

1816.504 Indefinite quantity contracts. (NASA supplements paragraph (a))

(a)(4)(ii) ID/IQ service contract values and task order values shall be expressed only in dollars.

1816.505 Ordering. (NASA supplements paragraphs (a) and (b))

(a)(2) Task and delivery orders shall be issued by the contracting officer.

(b)(4) The Agency and installation ombudsmen designated in accordance with 1815.70 shall review complaints from contractors on task order contracts and delivery order contracts.

1816.505–70 Task ordering.

(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.

(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.404–270(a).

(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.

(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.

(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.

(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216–80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with 1843–70.

1816.506–70 NASA contract clause.

Insert the clause at 1852.216–80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. The clause is applicable to both fixed-price and cost-reimbursement type contracts. If the contract does not require 533M reporting (See NHB 9501.2), use the clause with its Alternate I.

Subpart 1816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1816.603 Letter contracts.

1816.603–370 Approvals.

(a) All requests for authority to issue a letter contract shall include the following:

(1) Proposed contractor's name and address.

(2) Location where contract is to be performed.

(3) Contract number, including modification number, if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed.

(10) A statement that the definitive contract will contain all required clauses or identification of specific clause deviations that have been approved.

(11) A statement as to the necessity and advantage to the Government of the proposed letter contract.

(12) The definitization schedule described in FAR 16.603–2(c) expected to be negotiated with the contractor.

(b) Requests for authority to issue letter contracts having an estimated definitive contract amount equal to or greater than the Master Buy Plan submission thresholds of 1807.7101 (or modifications thereto) shall be signed by the procurement officer and submitted to the Associate Administrator for Procurement (Code HS) for approval.

(c) Authority to approve the issuance of letter contracts below the Master Buy Plan submission thresholds specified in 1807.7101 is delegated to the procurement officer.

(d) Any modification of an undefinitized letter contract approved by a procurement officer in accordance with paragraph (c) of this section that increases the estimated definitized contract amount to or above the Master Buy Plan submission thresholds must have the prior approval of the Associate Administrator for Procurement (Code HS).

PART 1817—SPECIAL CONTRACTING METHODS

Subpart 1817.1—Multiyear Contracting

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Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 55753, Oct. 29, 1996, unless otherwise noted.

Subpart 1817.1—Multiyear Contracting

1817.105 Policy.

1817.105–1 Uses. (NASA supplements paragraph (b))

(b) The Associate Administrator for Procurement (Code HS) is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in FAR 17.105–1(b) (1) through

(5) is met by the proposed use of multiyear contracting.

Subpart 1817.2—Options

1817.200 Scope of subpart.

FAR subpart 17.2 applies to all NASA contracts.

1817.203 Solicitations. (NASA supplements paragraph (g))

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

1817.204 Contracts. (NASA supplements paragraph (e))

(e)(i) The 5-year limitation (basic plus option periods) does not apply when the time needed to complete system development or hardware production is greater than five years.

(ii) Requests for deviations from the 5-year limitation policy shall be sent to the Associate Administrator for Procurement (Code HS) and shall include justification for exceeding five years and evidence that the extended years can be reasonably priced.

1817.206 Evaluation. (NASA supplements paragraph (b))

(b)(i) The procurement officer is the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

(ii) Unless a determination has been approved under 1817.206(b)(i), the selection statement for each acquisition involving an option shall address the source selection authority's consideration of the option as part of the initial competition.

1817.207 Exercise of options. (NASA supplements paragraph (f))

(f) Options under cost type contracts shall contain an estimated cost for the option period(s).

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the Associate Administrator for Procurement (Code HS).

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Associate Administrator for Procurement (Code HS). The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

1817.208 Solicitation provisions and contract clauses. (NASA supplements paragraph (c))

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217–5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

Subpart 1817.4—Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5—Interagency Acquisitions Under the Economy Act

1817.503 Determinations and findings requirements. (NASA supplements paragraph (a))

(a)(2) Current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.405 may be used to ascertain whether the acquisition can be accomplished more economically from commercial sources.

1817.504 Ordering procedures. (NASA supplements paragraph (b))

(b)(4) All payment provisions shall require the servicing agency or department to submit a final voucher, invoice, or other appropriate payment document within six months after the completion date of the order. A different period may be specified by mutual agreement if six months is not sufficient. The rationale for a longer period shall be documented in the contract file.

Subpart 1817.70—Acquisitions With Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, for acquisition of supplies or

services by NASA from or through the Military Departments.

1817.70001 Authorization and policy.

(a)(1) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the acquisition services, personnel, equipment, and facilities of the Military Departments, with their consent and with or without reimbursement, and, on a similar basis, to cooperate with the Military Departments in the use of acquisition services, equipment, and facilities.

(2) Although the Space Act provides interagency transaction authority nearly equivalent to the Economy Act, NASA has elected to conform its implementation of the Space Act to the requirements of the Economy Act. Therefore, unless exempt from the Economy Act for reasons other than the general authority of the Space Act, interagency acquisitions shall be supported by an Economy Act Determination and Finding (see FAR 17.503 and 1817.503). This requirement applies to all acquisitions from the Military Departments or other agencies.

(b) The Military Departments have agreed to cooperate fully with NASA in making their acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting acquisition of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with subpart 1804.71. The form shall not be used for requesting—

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and stock for military use or in-house service, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) The contracting officer shall include a provision in the order in accordance with 1817.504(b)(4).

(c) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002–72.

1817.7002–1 Acceptance by Military Department.

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448–2. Each DD Form 448–2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for

Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

1817.7002–2 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 7, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the cognizant NASA contracting office shall forward to the DOD contracting activity an amendment to the NASA Defense Purchase Request.

1817.7002–3 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments shall be made by that NASA office designated in block 9 of the NASA-Defense Purchase Request upon receipt of Standard Form 1080. Billings will be supported in the same manner as billings between Military Departments.

1817.7002–4 Contract clause.

The contracting officer shall insert the clause at 1852.217–70, Property Administration and Reporting, in any NASA-Defense Purchase Request when property will be involved.

Subpart 1817.71—Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from the sale to the acquisition of similar property for replacement purposes. The transaction must be evidenced in writing.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NHB 4300.1 and the Federal Property Management Regulations, Subchapter H, part 101–46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA installation Property Disposal Officer (PDO).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1819—SMALL BUSINESS PROGRAMS

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36707, July 9, 1997, unless otherwise noted.

1819.001 Definitions.

High-Tech as used in this part means research and/or development efforts that are within or advance the state-of-the-art in a technology discipline and are performed primarily by professional engineers, scientists, and highly skilled and trained technicians or specialists.

Subpart 1819.2—Policies

1819.201 General policy. (NASA supplements paragraphs (a), (c), and (d)

(a)(i) NASA is committed to providing to small, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) Congress established an 8 percent goal for NASA as described in 1819.7000. The Federal Acquisition Streamlining Act of 1994 has made NASA subject to a 5 percent goal for prime and subcontract awards to small disadvantaged business concerns, Historically Black Colleges and Universities, and minority institutions. Unlike the NASA 8 percent goal, the 5 percent goal does not include prime and subcontract awards to women-owned small businesses. NASA also annually negotiates small, small disadvantaged, and women-owned small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). These goals are Agency-wide goals.

(c) The Associate Administrator for Small and Disadvantaged Business Utilization (Code K) is the Agency official responsible for carrying out the duties in FAR 19.201(c).

(d)(i) The center director shall designate a qualified individual in the contracting office as a small business specialist to provide a central point of contact to which small business concerns may direct inquiries concerning small business matters and participation in NASA acquisitions. The small business specialist shall also perform other functions specifically set forth in this section 1819.201 or that the procurement officer may prescribe, with the concurrence of the Associate Administrator for Small and Disadvantaged Business Utilization, for implementing the Small Business Program. When the center director considers that the volume of acquisitions or the functions relating to acquisitions at the center do not warrant a full-time small business specialist, these duties may be assigned to procurement personnel on a part-time basis.

(ii) Small business specialists appointed under paragraph (d)(i) of this subsection shall perform the following duties, as the procurement officer determines appropriate to the installation:

(A) Maintain a program designed to locate capable small business sources, including those located in labor surplus areas, for current and future acquisitions.

(B) Coordinate inquiries and requests for advice from small business concerns on acquisition matters.

(C) Before issuance of solicitations or contract modifications for additional supplies or services, determine that small business concerns will receive adequate consideration, including making recommendations for initiation of set-asides (see FAR 19.5 and 19.8) and for taking action in accordance with FAR 19.506(b) and 1819.502–70. Participate and provide input early in the acquisition planning phase of proposed acquisitions, including acquisition strategy meetings.

(D) If small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, work with appropriate technical and contracting personnel to ensure that necessary specifications or drawings for current or future acquisitions will be available.

(E) Review acquisitions for possible breakout of items suitable for acquisition from small business concerns.

(F) Advise small business concerns regarding financial assistance available under laws and regulations, assist

such concerns in applying for such assistance, and ensure that small business concerns' requests for financial assistance are not treated as a handicap in securing the award of contracts.

(G) Participate in responsibility determinations (see FAR 9.103) when small business concerns are involved.

(H) Participate in the evaluation of prime contractors' small business subcontracting programs (see FAR 19.705–4).

(I) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the Small Business Program.

(J) Ensure that participation of small business concerns is accurately reported.

(K) Make available to SBA copies of solicitations when requested.

(L) Act as liaison between contracting officers and SBA area offices and representatives in connection with set-asides, certificates of competency, and any other matters in which the Small Business Program may be involved.

(M) In cooperation with contracting officers and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. Regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information regarding small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(N) When a small business concern's offer has been rejected for nonresponsiveness or nonresponsibility, assist that concern, upon its request, in understanding such requirements for future awards.

(O) Advise center personnel, as necessary, on new Governmentwide and Agency-approved small business programs and initiatives.

1819.202 Specific policies.

1819.202–1 Encouraging small business participation in acquisitions.

1819.202–170 Contract consolidations.

Prior to effecting a contract consolidation valued at $5 million or more, including options, which will not be exclusively reserved for small or 8(a) firms, the contracting officer, with assistance from the small business specialist and the cognizant technical office, shall prepare an impact assessment of the effects of the consolidation on present and future contracting and subcontracting opportunities for small, small disadvantaged, and women-owned small business. The impact assessment shall address the reasons for the proposed consolidation (especially where apparently unrelated efforts are being combined), the expected benefits, and any actions planned to mitigate or eliminate the impact on small business entities. The impact assessment shall be forwarded to the Associate Administrator for Procurement (Code HS) for concurrence by cognizant Headquarters offices and approval by the Associate Deputy Administrator (Technical).

Subpart 1819.3—Determination of Status as a Small Business Concern

1819.302 Protesting a small business representation. (NASA supplements paragraph (d))

(d)(1) The contracting officer shall not make awards of small business set-aside acquisitions before the expiration of the period for receipt of a size standard protest.

Subpart 1819.5—Set-Asides for Small Business

1819.502 Setting aside acquisitions.

1819.502–70 Non-initiation of set-asides.

(a) All cases involving the non-initiation of a set-aside, whether resulting

from a joint decision of the small business specialist and the contracting officer or a decision by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for review.

(b) If the small business specialist recommends that an individual acquisition or a class of acquisition, or a portion thereof, be set aside, the contracting officer shall promptly either concur in or disapprove the recommendation, stating in writing the reasons for disapproval.

(c) When an SBA representative is assigned and available and the contracting officer disapproves the small business specialist's recommendation, the contracting officer shall promptly refer the case to the SBA representative for review. The small business specialist shall take no further appeal action. The SBA representative must either concur with the decision or appeal the case to the procurement officer under FAR 19.505. If the procurement officer approves the contracting officer's decision and the SBA appeals under FAR 19.505(c), the procurement officer shall forward the required written justification, including a history of discussions between the center and the SBA and rationale for the decision, to the Headquarters Office of Procurement (HS).

(d) When an SBA representative is not assigned or available and the contracting officer disapproves the small business specialist's recommendation, the small business specialist may appeal in writing to the procurement officer. The procurement officer's decision shall be final. The contracting officer shall place a memorandum of the procurement officer's decision in the contract file. If the procurement officer's decision approves the contracting officer's action, the small business specialist shall forward complete documentation of the case to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

(e) The contracting officer shall prepare, sign, and retain in the contract file a memorandum of nonconcurrence in a recommended set-aside action.

§ 1819.502–3 Partial set-asides.

§ 1819.502–370 NASA reporting requirements.

The contracting officer shall separately report, in accordance with Subpart 1804.6, awards of the non-set-aside portions of small business set-aside acquisitions.

1819.505 Rejecting Small Business Administration recommendations.

See 1819.502–70.

1819.506 Withdrawing or modifying set-asides. (NASA supplements paragraph (b))

(b) If an SBA representative is not assigned or available, and the small business specialist disagrees with the contracting officer's written decision of withdrawal or modification of a set-aside determination, the small business specialist may appeal to the procurement officer in accordance with the procedures in 1819.502–70(d).

Subpart 1819.6—Certificates of Competency

1819.602 Procedures.

1819.602–1 Referral. (NASA supplements paragraph (a))

(a) On proposed awards exceeding the simplified acquisition threshold, the contracting officer should consider requesting a preaward survey (see FAR 9.106) before determining that a responsive small business firm is not responsible. The scope of the preaward survey request should be limited to those elements of responsibility that are questioned.

(2) The contracting officer shall forward a copy of the referral to SBA through the procurement officer to the Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

1819.602–3 Resolving differences between the agency and the Small Business Administration.

1819.602–370 NASA procedures.

(a) When agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer shall forward to the Headquarters Office of Procurement (Code HS) on an expedited basis, a complete case file with a request that the case be considered for appeal to SBA Headquarters. The contracting officer shall include the data already furnished to SBA, SBA's rationale for proposing to issue a COC, and the contracting officer's comments. The contracting officer shall suspend acquisition action until informed by Code HS of the final decision in the case.

(b) If the Office of Procurement concludes that the referral to SBA should be withdrawn and a contract awarded without benefit of a COC, Code HS shall inform the contracting officer.

(c) If the Office of Procurement agrees with the contracting officer's recommended appeal action, the Associate Administrator for Procurement shall forward the appeal through the Office of Small and Disadvantaged Business Utilization (Code K) to SBA Headquarters.

Subpart 1819.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

1819.705–2 Determining the need for a subcontracting plan. (NASA supplements paragraph (d))

(d) Solicitations for competitive negotiated acquisitions shall require proposed subcontracting plans with initial proposals (see 1819.708(b)(1)). For sole source negotiated acquisitions, the contractor shall be required to submit a proposed subcontracting plan with the proposal.

1819.705–4 Reviewing the subcontracting plan.

1819.705–470 Acquisition-specific subcontracting goals.

Section 1819.201 addresses Agencywide goals at the combined prime and subcontract levels. Appropriate subcontracting goals for an individual acquisition, however, are to be independently determined on the basis of the specific circumstances of the acquisition, consistent with FAR 19.705–4 and 1819.7002(b), and not on the basis of an Agencywide or center goal. Acquisition-specific subcontracting goals should reflect maximum practicable opportunities for all categories of small business concerns to participate in NASA programs, consistent with efficient performance. The methods outlined in NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, may also be useful in establishing reasonable subcontracting goals for small and women-owned small business concerns.

1819.708 Solicitation provisions and contract clauses. (NASA supplements paragraph (b))

(b)(1) The contracting officer shall use the clause at FAR 52.219–9 with its Alternate II when contracting by negotiation.

1819.708–70 NASA solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1852.219–73, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219–9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.219–75, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR

52.219–9, except for contracts covered by an approved commercial plan.

Subpart 1819.8—Contracting With the Small Business Administration (the 8(a) Program)

1819.804 Evaluation, offering, and acceptance.

1819.804–1 Agency evaluation.

The small business specialist shall review and evaluate all acquisition requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

Subpart 1819.10—Small Business Competitiveness Demonstration Program

1819.1005 Applicability. (NASA supplements paragraph (b))

(b) The targeted industry categories for NASA and their Standard Industrial Classification (SIC) codes are:

SIC—Industry
Code—Category
3571—Electronic Computers
3577—Computer Peripheral Equipment, not elsewhere classified
3663—Radio & TV Broadcasting and Communications Equipment
3764—Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts
3769—Guided Missile and Space Vehicle Parts and Auxiliary Equipment, not elsewhere classified
3812—Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments
3827—Optical Instruments and Lenses
7371—Computer Programming Services
7373—Computer Integrated Systems Design
7379—Computer Related Services, not elsewhere classified.

Subpart 1819.70—NASA 8 Percent Goal

1819.7000 General.

Public Laws 101–144, 101–507, and 102–389 require the NASA Administrator to ensure, to the fullest extent possible, that at least 8% of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

1819.7001 Definitions.

(a) *Small Disadvantaged Business (SDB) concern* and *Women-Owned Small Business (WOSB) concern* are defined in FAR 19.001.

(b) *Historically Black College or University (HBCU)* and *Minority Institution (MI)* are defined in FAR 26.301.

1819.7002 Contracting officer responsibility.

(a) Contracting officers must seek out as potential sources entities identified in 1819.7001 and give full consideration to these entities to satisfy NASA requirements. The participation of NASA prime contractors is also essential to meeting the Agency's 8 percent goal.

(b) NASA Policy Directive (NPD) 5000.2, Uniform Methodology for Determination of Small Disadvantaged Subcontracting Goals, contains guidance on developing realistic goals. It is applicable to acquisitions expected to exceed $50 million, including options. The methodology may be used for lesser value acquisitions.

1819.7003 Contract clause.

The contracting officer shall insert the clause at 1852.219–76, NASA 8 Percent Goal, in all solicitations and contracts other than those below the simplified acquisition threshold or when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

Subpart 1819.71—NASA Rural Area Small Business Plan

1819.7101 Definition.

Rural area means a county with a population of fewer than twenty thousand individuals.

1819.7102 General.

Pursuant to Public Law 100–590, NASA established a Rural Area Business Enterprise Development Plan, including methods for encouraging prime and subcontractors to use small business concerns located in rural areas as subcontractors and suppliers. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

1819.7103 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.219–74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed $500,000 ($1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

Subpart 1819.72—NASA Mentor-Protégé Program

1819.7201 Scope of subpart.

The NASA Mentor-Protégé Program is designed to incentivize NASA prime contractors to assist small disadvantaged business concerns, Historically Black colleges and Universities, minority institutions, and women-owned small business concerns, in enhancing their capabilities to perform NASA contracts and subcontracts, foster the establishment of long-term business relationships between these entities and NASA prime contractors, and increase the overall number of these entities that receive NASA contract and subcontract awards.

1819.7202 Definitions.

High-Tech is defined in 1819.001.

1819.7203. Non-affiliation.

For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in 1819.7214 from such mentor firm under the Program. In addition, NASA shall not consider partial ownership, up to 10 percent, of a Department of Defense (DOD)-sanctioned protégé firm by its DOD mentor to constitute affiliation.

1819.7204 Transportability of features from the Department of Defense (DOD) Mentor-Protégé program to NASA contractors.

(a) In accordance with the benefits authorized by the DOD Mentor-Protégé Program (Public Law 101–510, Section 831, as amended by Public Law 102–190, Section 814), a NASA contractor who is also an approved DOD mentor can transfer credit features to their NASA contracts.

(b) NASA prime contractors, who are approved DOD mentors, can award subcontracts noncompetitively under their NASA contracts to the protégés which they are assisting under the DOD Program (Public Law 101–510, Section 831(f)(2)).

(c) NASA prime contractors may count the costs of developmental assistance provided of protégés being assisted under the DOD Program toward meeting the goals in their subcontracting plans under their NASA prime contracts (Public Law 102–190, Section 814). Limitations which may reduce the value of this benefit include:

(1) Credit toward attaining subcontracting goals is available only to the extent that the developmental assistance costs have not been reimbursed to the contractor by DOD as direct or indirect costs; or

(2) The credit is available to meet the goals of a NASA subcontracting plan only to the extent that it has not been applied to a DOD subcontracting plan. The same unreimbursed developmental assistance costs cannot be counted toward meeting the subcontracting goals of more than one prime contract. These costs would accrue from credit for the multiples attributed to assistance provided by Small Business Development Centers, Historically Black Colleges and Universities and minority institutions.

(d) The features identified in paragraphs (a), (b) and (c) of this section point out the portability of features

from the DOD Mentor-Protégé Program to NASA prime contractors. NASA mentors will be held to show ''good faith'' by providing actual developmental assistance beyond transferring credit from activity in the DOD Program to NASA subcontracting plans.

1819.7205 General policy.

(a) Eligible large business prime contractors, not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', who have at least one active subcontracting plan, and who are approved as mentor firms may enter into agreements with eligible entities (as defined in 1819.7209) as protégés to provide appropriate developmental assistance to enhance the capabilities of protégés to perform as subcontractors and suppliers. Eligible small business prime contractors, not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', and that are capable of providing developmental assistance to protégés, may also be approved as mentors. An active mentor-protégé arrangement requires the protégé to be a subcontractor under the mentor's prime contract with NASA.

(b) The pilot Program has a duration of three years commencing from March 24, 1995. During this period, eligible mentor firms, which have received approval by NASA to participate in the Program pursuant to 1819.7212, may enter into agreements with protégé firms.

(c) For the pilot phase of the Program, mentor-protégé activity will be limited to cost-plus-award-fee contracts.

(d) Costs incurred by a mentor to provide developmental assistance, technical or managerial assistance described in 1819.7214, are allowable

1819.7206 Incentives for prime contractor participation.

(a) During source selection Mentor-Protégé will be evaluated as part of SDB utilization under the Mission Suitability factor. Under Mission Suitability, SDB utilization will be either a subfactor or an element under a subfactor.

(b) Under cost-plus-award fee contracts, approved mentor firms shall be eligible to earn award fee associated with their performance as a mentor by performance evaluation period. For purposes of earning award fee, the mentor firm's performance shall be evaluated against the criteria described in the clause at 1852.219–79, Mentor Requirements and Evaluation.

1819.7207 Measurement of Program success.

The overall success of the NASA Mentor-Protégé Program encompassing all participating mentors and protégés will be measured by the extent to which it results in:

(a) An increase in the number, dollar value and percentage of subcontractors awarded to protégés by mentor firms under NASA contracts since the date of entry into the Program;

(b) An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the Program (under NASA contracts, contracts awarded by other Federal agencies and under commercial contracts);

(c) An increase in the number and dollar value of subcontracts awarded to a protégé firm by its mentor firm; and

(d) An increase in subcontracting with protégé firms in industry categories where they have not traditionally participating within the mentor firm's activity.

1819.7208 Mentor firms.

(a) Eligibility:

(1) Contractors eligible for receipt of government contracts;

(2) Large prime contractors performing under contracts with at least one negotiated subcontracting plan as required by FAR 19.7; and

(3) Small business prime contractors that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors and suppliers.

(b) Mentors will be encouraged to identify and select as protégés:

(1) A broad base of firms including those defined as emerging firms (e.g., a protégé whose size is no greater than 50 percent of the size standard applicable

to the SIC code assigned to a contracting opportunity);

(2) Firms in addition to those with whom they have established business relationships; and

(3) High-tech firms.

1819.7209 Protégé firms.

(a) For selection as a protégé, a firm must be:

(1) An SDB, HBCU, MI, or WOSB;

(2) Certified as small in the SIC code for the services or suppliers to be provided by the protégé under its subcontract to the mentor; and

(3) Eligible for receipt of government contracts.

(b) A protégé firm may self-certify to a mentor firm that it meets the requirements set forth in paragraph (a) of this section. Mentors may rely in good faith on written representation by potential protégés that they meet the specified eligibility requirements.

(c) Protégés may have multiple mentors. Protégés participating in mentor-protégé programs in addition to the NASA Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

1819.7210 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1819.7208(b).

(b) Mentor firms may have more than one protégé.

(c) The selection of protégé firms by mentor firms may not be protested, except as in paragraph (d) of this section.

(d) A protest regarding the size of eligibility status of an entity selected by a mentor to be a protégé shall be handled in accordance with FAR 19.703(b). The contracting officer shall notify the Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) (Code K) of the protest.

1819.7211 Application process for mentor firms to participate in the Program.

(a) Prime contractors interested in becoming a mentor firm must submit a request to the NASA OSDBU to be approved under the Program. The application will be evaluated on the extent to which the company plans to provide developmental assistance. The information required in paragraph (b) of this section must be submitted to be considered for approval as a mentor firm.

(b) A proposed mentor must submit the following information to the NASA OSDBU:

(1) A statement that the mentor firm is currently performing under at least one active approved subcontracting plan (small business exempted) and that they are eligible, as of the date of application, for the award of Federal contracts;

(2) The cognizant NASA contract number(s), type of contract, period of performance (including options), title of technical program effort, name of NASA Program Manager (including contact information) and name of the NASA field center where support is provided;

(3) The number of proposed mentor-protégé arrangements;

(4) Data on all current NASA contracts and subcontracts to include the contract/subcontract number(s), period of performance, awarding NASA installation or contractor and contract/subcontract value(s) including options;

(5) Data on total number and dollar value of subcontracts awarded under NASA prime contracts within the past 2 years and the number and dollar value of such subcontracts awarded to entities defined as protégés.

(6) Information on the proposed types of developmental assistance. For each proposed mentor-protégé relationship include information on the company's ability to provide developmental assistance to the identified protégé firm and how that assistance will potentially increase subcontracting opportunities for the protégé firm, including subcontracting opportunities in industry categories where these entities are not dominant in the company's current subcontractor base; and

(7) A Letter of Intent signed by both parties. At a minimum, the Letter of Intent must include the stated commitment that the parties intend to enter into a mentor-protégé agreement under the NASA Program, that they

intend to cooperate in the establishment of a suitable developmental assistance program to meet their respective needs, and that they agree to comply with the obligations in 1819.7215 and all other provisions governing the Program.

1819.7212 OSDBU review and approval process of agreement.

(a) The information specified in 1819.7211(b) is reviewed by the NASA OSDBU. This review will be completed no later than 30 days after receipt by the OSDBU. The OSDBU will provide a copy of the submitted information to the cognizant NASA technical program manager and contracting officer for a parallel review and concurrence.

(b) If OSDBU approves the application, then the mentor

(1) Negotiates an agreement with the protégé; and

(2) Submits an original and two (2) copies of the agreement to the OSDBU for approval by the NASA Mentor-protégé program manager, the NASA technical program manager, and the contracting officer.

(c) Upon agreement approval, the mentor may implement a developmental assistance program.

(d) An approved agreement will be incorporated into the mentor's contract with NASA. It should be added to the subcontracting plan in contracts which contain such a plan.

(e) If OSDBU disapproves the application, then the mentor may provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU. Upon finding deficiencies that NASA considers correctable, the OSDBU will notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

1819.7213 Agreement contents.

The contents of the agreement must contain:

(a) Names and addresses of mentor and protégé firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protégé firm, OSDBU, and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the Program;

(c) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor shall notify the OSDBU and the contracting officer immediately upon receipt of such notice from the protégé;

(d) A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, to include a description of the subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégé developmental success;

(e) A listing of the number and types of subcontracts to be awarded to the protégé firm;

(f) Program participation term;

(g) Termination procedures;

(h) Plan for accomplishing work should the agreement be terminated; and

(i) Other terms and conditions, as appropriate.

1819.7214 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to—

(1) Financial management,

(2) Organizational management,

(3) Overall business management/planning, and

(4) Business development;

(b) Engineering and other technical assistance;

(c) Noncompetitive award of subcontracts under NASA contracts;

(d) Progress payments based on costs. The customary progress payment rate for all NASA contracts with small disadvantaged businesses is 95 percent. This customary progress payment rate for small disadvantaged businesses may be used by prime contractors;

(e) Advance payments. While a mentor can make advance payments to its protégés who are performing as subcontractors, the mentor will only be reimbursed by NASA for these costs if

advance payments have been authorized in accordance with statute and regulation;

(f) Loans;

(g) Rent-free use of facilities and/or equipment;

(h) Property; and

(i) Temporary assignment of personnel to the protégé for purpose of training.

1819.7215 Obligation.

(a) The mentor or protégé may voluntarily withdraw from the Program as mutually agreed by both mentor and protégé.

(b) Mentor and protégé firms will submit a ''lessons learned'' evaluation to the NASA OSDBU at the conclusion of the pilot program period or the conclusion of their effort, whichever comes first.

1819.7216 Internal controls.

(a) The NASA OSDBU will manage the Program. Internal controls will be established by the OSDBU to achieve the stated program objectives (by serving as checks and balances against undesired actions or consequences) such as:

(1) Reviewing and evaluating mentor applications for realism, validity and accuracy of provided information;

(2) Reviewing semi-annual progress reports submitted by mentors and protégés, if any, on protégé development to measure protégé progress against the master plan contained in the approved agreement.

(3) Site visits to NASA installation where mentor-protégé activity is ongoing.

(b) NASA may terminate mentor-protégé agreements if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA will terminate an agreement or exclude a particular entity by sending a written notice to the affected party specifying the action being taken and the effective date of that action. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement, as required in 1819.7213(h).

1819.7217 Reports.

(a) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protégé program manager, the NASA OSDBU, to include information as outlined in 1852.219–79(b).

(b) Protégés are encouraged to submit semi-annual reports to the OSDBU on Program progress pertaining to their mentor-protégé agreement. However, costs associated with the preparation of these reports are unallowable costs under Government contracts and will not be reimbursed by the Government.

(c) The NASA technical program manager shall include an assessment of the prime contractor's (mentor's) performance in the Mentor-Protégé Program in his quarterly 'Strengths and Weaknesses' evaluation report. A copy of these comments, as pertains to the technical effort and protégé development, will be provided to the OSDBU and the contracting officer.

(d) The NASA Mentor-Protégé program manager will submit semi-annual reports to the cognizant contracting officer regarding the participating prime contractor's performance in the Program for use in the award fee determination process.

1819.7218 Program review.

At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé, as appropriate, will formally brief the NASA OSDBU, the technical program manager, and the contracting officer regarding Program accomplishments pertaining to the approved agreement. This review will be incorporated into the normal program review, where applicable. A separate review will be scheduled for other contracts to be held at the NASA work site location.

1819.7219 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.219–77, NASA Mentor-Protégé Program, in all cost-plus-award-fee solicitations and contracts with subcontracting plans or in the case of small business set-asides

exceeding $500,000 ($1,000,000 for construction) that offer subcontracting opportunities.

(b) The contracting officer shall insert the clause at 1852.219–79, Mentor Requirements and Evaluation, in contracts where the prime contractor is a participant in the NASA Mentor-Protégé Program.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.
1822.000–70 Scope of part.

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.
1822.101–1 General.
1822.101–3 Reporting labor disputes.
1822.101–4 Removal of items from contractors' facilities affected by work stoppages.
1822.101–70 Admission of labor representatives to contract sites.
1822.103 Overtime.
1822.103–4 Approvals.

Subpart 1822.3—Contract Work Hours and Safety Standards Act

1822.302 Liquidated damages and overtime pay.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.400–70 Contacts with the Department of Labor.
1822.404–3 Procedures for requesting wage determinations.
1822.406–8 Investigations.
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1822.406–13 Semiannual enforcement reports.

Subpart 1822.6—Walsh-Healey Public Contracts Act

1822.604 Exemptions.
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1822.804–2 Construction.
1822.807 Exemptions.
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Subpart 1822.10—Service Contract Act of 1965

1822.1001 Definitions.
1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).
1822.1008–270 Additional information for the preparation of SF 98/98a.
1822.1008–7 Required time of submission of Notice.

Subpart 1822.13—Special Disabled and Vietnam ERA Veterans

1822.1303 Waivers.
1822.1306 Complaint procedures.

Subpart 1822.14—Employment of the Handicapped

1822.1403 Waivers.
1822.1406 Complaint procedures.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55755, Oct. 29, 1996, unless otherwise noted.

1822.000–70 Scope of part.

(a) Contracting officers shall consult with the installation labor relations advisor or designee when taking any of the actions prescribed or authorized in FAR part 22 or part 1822.

(b) Proposed actions having a substantial impact on the activities of NASA or other Government agencies shall be approved by the Headquarters Contractor Industrial Relations Office (Code JLR).

Subpart 1822.1—Basic Labor Policies

1822.101 Labor relations.

1822.101–1 General. (NASA supplements paragraph (d))

(d) When a strike that may have an adverse effect on NASA programs is imminent or in progress at a prime contractor's or subcontractor's plant, contracting officers shall:

(i) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a

subcontractor's plant, the subcontractor may be approached only through the prime contractor;

(ii) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant; and

(iii) Consider taking the actions described in FAR 22.101–4.

1822.101–3 Reporting labor disputes.

Reports of potential or actual labor disputes affecting NASA acquisitions, operations, or services shall be submitted to the Headquarters Contractor Industrial Relations Office (Code JLR). These reports shall be made as early as possible and shall include immediately available information. Supplemental reports shall be made to provide appropriate additional information. Reports shall described at a minimum:

(1) The nature of the potential or actual dispute, including whether a strike, lockout, slow-down, shut-down, or picketing is involved and the degree of emergency presented;

(2) The character, quantity, and importance of the supplies, operations, or services involved, including scheduled performance and delivery dates and their relationship to the total acquisition program;

(3) The identity and location of the parties to the dispute and their representatives, including the approximate number of employees involved;

(4) The need for and availability of alternative resources to furnish the items involved within the time required;

(5) Any critical items that should be removed from the plant or work site or should continue to be processed there with the consent of the parties to the dispute; and

(6) Recommended action to be taken by NASA.

1822.101–4 Removal of items from contractors' facilities affected by work stoppages. (NASA supplements paragraph (a))

(a) (3) The contracting officer shall obtain approval from Code JLR for any contemplated action.

1822.101–70 Admission of labor representatives to contract sites.

NASA activities may not prevent the access of labor union representatives to contract sites for the conduct of union business if their activities are compatible with safety and security regulations and performance of the contract work involved.

1822.103 Overtime.

1822.103–4 Approvals. (NASA supplements paragraph (a))

(a) The contracting officer is authorized to approve overtime premiums at Government expense. If two or more contracting offices have current contracts at a single facility and approval of overtime by one will affect the performance or cost of contracts of another, the approving official shall obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which premiums will be approved. In the absence of evidence to the contrary, a contracting officer may rely on the contractor's statement that approval will not affect performance or payments under any contract of another contracting office.

Subpart 1822.3—Contract Work Hours and Safety Standards Act

1822.302 Liquidated damages and overtime pay. (NASA supplements paragraphs (c) and (d))

(c) The Director of the Headquarters Contractor Industrial Relations Office (Code JLR) is the agency head designee.

(d) Disposal of funds withheld or collected for liquidated damages shall be in accordance with direction of the Director of Code JLR.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.400–70 Contacts with the Department of Labor.

All contacts with the Department of Labor required by FAR subpart 22.4

shall be conducted through the Headquarters Contractor Industrial Relations Office (Code JLR). Contracting officers shall submit all pertinent information to Code JLR in support of the required contacts.

1822.404–3 Procedures for requesting wage determinations.

Contracting officers shall submit requests for project wage determinations to Code JLR at least 55 days (70 days if possible) before issuing the solicitation.

1822.406–8 Investigations. (NASA supplements paragraphs (a) and (d))

(a) The contracting officer is responsible for conducting investigations of labor violations relative to contracts under his/her cognizance.

(d) Reports of violations shall be sent to Code JLR.

1822.406–9 Withholding From or suspension of contract payments. (NASA supplements paragraph (c))

(c)(4) Code JLR shall determine the disposal of funds.

1822.406–13 Semiannual enforcement reports.

Procurement officers shall submit semiannual enforcement data within 20 days after the end of the specified reporting periods to the Headquarters Office of Procurement (Code HK). Negative statements are required.

Subpart 1822.6—Walsh-Healey Public Contracts Act

1822.604 Exemptions.

1822.604–2 Regulatory exemptions. (NASA supplements paragraph (c))

(b) Requests for exemptions shall be submitted in writing through the contracting officer to the Headquarters Contractor Industrial Relations Office (Code JLR).

[61 FR 55755, Oct. 29, 1996, as amended at 62 FR 36713, July 9, 1997]

Subpart 1822.8—Equal Employment Opportunity

1822.804 Affirmative action programs.

1822.804–2 Construction. (NASA supplements paragraph (b))

(b) The Headquarters Office of Procurement (Code HK) will furnish each procurement officer the listing.

1822.807 Exemptions.

Requests for exemption pursuant to FAR 22.807(a)(1), (a)(2), or (b)(5) shall be sent to the Headquarters Office of Procurement (Code HS).

1822.810 Solicitation provisions and contract clauses. (NASA supplements paragraph (e))

(e) If an offeror completes a negative representation under FAR 52.222–22, the contracting officer shall obtain the information required by FAR 52.222–26(b)(7) within 30 days of contract award. The information shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4).

Subpart 1822.10—Service Contract Act of 1965

1822.1001 Definitions.

Agency labor advisor is the Director of the Headquarters Contractor Industrial Relations Office (Code JLR). All contacts with other agencies required by FAR subpart 22.10 shall be conducted through Code JLR. Contracting officers shall submit all pertinent information to Code JLR in support of the required contacts.

1822.1008 Procedures for preparing and submitting Notice (SF 98/98a).

1822.1008–270 Additional information for the preparation of SF 98/98a.

The information listed in this section by item number shall be furnished, in addition to that required by the SF 98/98a:

(a) Item 6. Insert on the far left side of the block the code identifying the type of proposed action:

Code	Proposed action
I	New contract (use *only* when services are not presently being performed).

Code	Proposed action
II	Recompetition of services.
III	Contract modifications affecting the scope of the work.
IV	Extension of contract performance through exercise of an option or otherwise.
V	Other. When a multiple year contract (funding is not subject to annual appropriation) is to be entered into, specify ''multiple year R&D funded'' on the SF 98.

(b) Item 8. (1) If the proposed contract will be awarded under Section 8(a) of the Small Business Act, insert both the Small Business Administration and the name of the subcontractor.

(2) If no wage determination is available for the particular contract, insert ''None'' in Item 8.b.

(c) Item 10. Add the solicitation number.

(d) Item 12. (1) When entering into a new service contract, list all classes of work expected to be performed under the contract under this item, regardless of whether the class of employees is considered professional, executive, administrative, or hourly. However, if submission of the SF 98/98a is in connection with any action other than a new contract (Code I in paragraph (a) of this subsection), list only the classes of work that the incumbent indicates are ''nonexempt.''

(2) When classifications include both categories of employees covered by a collective bargaining agreement and those not represented by a union, mark the classifications that are unionized with an asterisk.

(3) If the classification of work is not known, use the most descriptive job title available for the work to be performed under the contract.

(e) Item 13. If the number of employees is not known, the estimated hours required to perform the tasks should be indicated so that staffing estimates can be determined and listed.

(f) Item 14. Include in this item the wage rates that would be paid if the employees were subject to 5 U.S.C. 5332 (GS grades).

1822.1008–7 Required time of submission of Notice. (NASA supplements paragraphs (a), (b), (c), and (d))

(a) Contracting officers shall submit the notices to Code JLR at least 70 days before initiating the associated contract actions.

(b) When the circumstances in FAR 22.1008–7(b) apply, contracting officers shall submit the required notices to Code JLR at least 40 days before initiating the associated contract actions.

(c) Contracting officers shall contact Code JLR before initiating any action when the circumstances in FAR 22.1008–7(c) and (d) apply.

(d) See paragraph (c) of this section.

Subpart 1822.13—Special Disabled and Vietnam Era Veterans

1822.1303 Waivers. (NASA supplements paragraph (c))

(c) Requests for waivers shall be submitted to the Associate Administrator for Equal Opportunity Programs (Code E).

1822.1306 Complaint procedures.

Contracting officers shall submit all complaints to the Associate Administrator for Equal Opportunity Programs (Code E).

Subpart 1822.14—Employment of the Handicapped

1822.1403 Waivers. (NASA supplements paragraph (c))

(c) Requests for waivers shall be submitted to the Associate Administrator for Equal Opportunity Programs (Code E).

1822.1406 Complaint procedures.

Contracting officers shall submit all complaints to the Associate Administrator for Equal Opportunity Programs (Code E).

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 1823.1—Pollution Control and Clean Air and Water

Sec.
1823.106 Delaying award.
1823.107 Compliance responsibilities.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.
1823.570–1 Scope.
1823.570–2 Definitions.
1823.570–3 Contract clause.
1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 1823.70—Safety and Health

1823.7001 NASA contract clauses.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.
1823.7102 Procedures.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 55757, Oct. 29, 1996, unless otherwise noted.

Subpart 1823.1—Pollution Control and Clean Air and Water

1823.106 Delaying award. (NASA supplements paragraph (a))

(a) Notifications shall be submitted through the procurement officer and the Associate Administrator for Procurement (Code HS).

1823.107 Compliance responsibilities.

Notifications under FAR 23.107 shall be submitted through the same channels as under 1823.106.

Subpart 1823.3—Hazardous Material Identification and Material Safety Data

1823.370 Acquisition of potentially hazardous items from or through another Government agency.

When acquiring supplies or services from or through another Government agency (e.g., see FAR part 8 and FAR subpart 17.5), NASA shall request that agency to furnish NASA the data required by FAR subpart 23.3.

Subpart 1823.5—Drug-Free Workplace

1823.570 Drug- and alcohol-free workforce.

1823.570–1 Scope.

Sections 1823.570 through 1823.570–4 set forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102–195, sec. 21, 105 Stat. 1616 to 1619.

1823.570–2 Definitions.

As used in this subpart *employee* and *controlled substance* are as defined in FAR 23.503. The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 through 1823.570–4 and the clause at 1852.223–74.

Employee in a sensitive position means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated ''mission critical'' pursuant to the clause at 1852.246–70. The term also includes any applicant who is interviewed for a position described in this paragraph.

Use, in violation of applicable law or Federal regulation, of alcohol includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

1823.570–3 Contract clause.

The contracting officer shall insert the clause at 1852.223–74, ''Drug- and Alcohol-Free Workforce,'' in all solicitations and contracts containing the clause at 1852.246–70, ''Mission Critical Space Systems Personnel Reliability Program,'' and in other solicitations and contracts exceeding $5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223–74 in solicitations and contracts for commercial items (see FAR parts 2 and 12).

1823.570–4 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at 1852.223–74. Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223–74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

Subpart 1823.70—Safety and Health

1823.7001 NASA contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223–70 shall be included in—

(1) All negotiated contracts of $1,000,000 or more;

(2) All construction, repair, or alteration contracts in excess of the simplified acquisition threshold;

(3) All contracts having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and

(4) Any acquisition regardless of dollar amount when:

(i) Any deliverable contract end item is of a hazardous nature, or

(ii) During the life of the contract it can reasonably be expected that hazards will be generated within the operational environment and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR subpart 22.10) in which the application of the act and its implementing regulations constitute adequate safety and health protection;

(2) When the contracting officer makes a written determination that the clause is not necessary under the circumstances of the acquisition, and;

(3) Exclusion of the clause is approved by the installation safety and health official.

(c) The contracting officer shall insert the provision at 1852.223–73, Safety and Health Plan, in solicitations containing the clause at 1852.223–70, when a Safety and Health Plan is to be submitted with the offeror's proposal. This clause may be modified to identify specific information that is to be included in the plan. The contracting officer shall include the approved plan in any resulting contract.

(d) When the installation safety and health official recommends that a Safety and Health Plan be submitted by the apparently successful offeror after notification of selection but before contract award, the provision at 1852.223–73 shall be used with its Alternate I.

Subpart 1823.71—Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at 1852.223–71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Procedures.

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1824.1—Protection of Individual Privacy

Sec.
1824.102 General.

Subpart 1824.2—Freedom of Information Act

1824.203 Policy.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

Subpart 1824.1—Protection of Individual Privacy

1824.102 General.

(1) For NASA rules and regulations implementing the Privacy Act, see Privacy—NASA Regulations, (14 CFR 1212). The Act applies to any contractor maintaining a system of records to accomplish a NASA mission.

(2) Systems of records to which the Privacy Act does not apply include—

(i) Records maintained by a contractor on individuals employed by the contractor on its own behalf for the purpose of providing supplies and services to the Federal Government; and

(ii) Records that—

(A) Are maintained under contracts with educational institutions to provide training;

(B) Are generated on students working under the contract relative to their attendance (admission forms, grade reports, etc.);

(C) Are similar to those maintained on other students; and

(D) Are commingled with their records on other students.

Subpart 1824.2—Freedom of Information Act

1824.203 Policy. (NASA supplements paragraphs (a) and (b))

(a) For NASA implementation of the Freedom of Information Act, see Availability of Agency Records to Members of the Public (14 CFR part 1206).

(b) When receiving any Freedom of Information Act request from the public, the contracting officer shall immediately refer the request to the Freedom of Information Act Officer, NASA Information Center, or other responsible point of contact as set forth in installation procedures.

[61 FR 55758, Oct. 29, 1996. Redesignated at 62 FR 36713, July 9, 1997]

PART 1825—FOREIGN ACQUISITION

Sec.
1825.000 Scope of part.
1825.000–70 Definition.

Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.
1825.101–70 NASA definition.
1825.102 Policy.
1825.103 Agreements with certain foreign governments.
1825.103–70 Canadian end products.
1825.105 Evaluating offers.
1825.108 Excepted articles, materials, and supplies.

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy.
1825.207 Solicitation provisions and contract clauses.
1825.207–70 NASA contract clause.

Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies.

Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart.
1825.402 Policy.
1825.403 Exceptions.
1825.405 Procedures.

Subpart 1825.6—Customs and Duties

1825.602 Policy.
1825.603 Procedures.
1825.603–70 NASA procedures.
1825.605 Contract clause.
1825.605–70 NASA contract clause.

Subpart 1825.9—Additional Foreign Acquisition Clauses

1825.901 Omission of Audit clause.

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.
1825.7001 Definition.
1825.7002 Policy.
1825.7003 Procedure.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36713, July 9, 1997, unless otherwise noted.

1825.000 Scope of part.

1825.000–70 Definition.

Agency head, for the purposes of this part, is the Associate Administrator for Procurement unless specifically stated otherwise.

Subpart 1825.1—Buy American Act—Supplies

1825.101 Definitions.

1825.101–70 NASA definition.

Canadian end product, or an item with an estimated value of $25,000 or less, means an unmanufactured end product mined or produced in Canada or an end product manufactured in Canada, if the cost of its components mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product. For an end product with an estimated value in excess of $25,000, the definition at FAR 25.401 applies.

1825.102 Policy. (NASA supplements paragraphs (a) and (b))

(a)(3)(A) The procurement officer shall send proposed public interest determinations to the Associate Administrator for Procurement (Code HS) for approval.

(B) See 1825.103–70(A) for a blanket determination regarding Canadian end products.

(a)(4) The items listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or a satisfactory quality.

(b)(1) Contracting officers may make determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. The following is the format for nonavailability determinations:

DETERMINATION OF NONAVAILABILITY

Pursuant to the authority contained in the Buy American Act (41 U.S.C. 10) and authority delegated to me by NFS 1825.102(b)(1), I hereby make the following findings:

a. (Insert a description of the item or items to be acquired, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

b. (Enter the name and address of the proposed contractor or supplier and the country of origin of the items.)

c. (Include a brief statement of the necessity for the acquisition.)

d. (Include a statement of facts establishing the nonavailability of similar items of domestic origin. If there is no known domestic item that can be used as a reasonable substitute, make a statement to this effect.)

On the basis of these findings, I determine that the item(s) described in paragraph a. above is/are not mined, produced, or manufactured (or the articles, materials, or supplies from which the item(s) is/are manufactured are not mined, produced, or manufactured) in the United States in sufficient and reasonably available quantities of a satisfactory quality.

Accordingly, the Buy American Act requirement that acquisition be made from domestic sources and that the item(s) be of domestic origin is not applicable to this acquisition, since the acquisition is within the Buy American Act's nonavailability exception.

Authority is granted to acquire the above-described item(s) of foreign origin (country

or origin) at an estimated total cost of $_____, including duty and transportation costs to destination.
(Date)
Contracting Officer

1825.103 Agreements with certain foreign governments.

1825.103–70 Canadian end products.

(a) The Associate Administrator for Procurement has determined that it is inconsistent with the public interest to apply restrictions of the Buy American Act to Canadian end products with estimated values of $25,000 or less as defined in 1825.101–70. Accordingly, contracting officers shall evaluate all offers for such Canadian end products on a parity with offers for domestic and products, except that applicable duty (whether or not a duty free entry certificate may be issued) shall be included in evaluating offers for Canadian end products.

(b) See FAR 25.402(a)(3)(ii) for evaluation of Canadian end products with values in excess of 25,000 as defined in FAR 25.401.

1825.105 Evaluating offers. (NASA supplements paragraphs (a) and (c))

(a) To make the price comparison between domestic and foreign offers, the contracting officer shall increase the price of the foreign offer by 6- or 12-percent, as applicable. If the application of the differential results in a tie between the foreign and domestic offers, award shall be made to the domestic offeror.

(c) The FAR requirement to apply both 6- and 12-percent factors pertains only when the lowest acceptable domestic offer is from a small business concern.

1825.108 Excepted articles, materials, and supplies. (NASA supplements paragraph (a))

(a) See 1825.102(a)(4) and 1825.202(a)(3).

Subpart 1825.2—Buy American Act—Construction Materials

1825.202 Policy. (NASA supplements paragraph (a))

(a)(2) The construction materials listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. In addition, subject to the approval of the head of the contracting activity when required, contracting officers may make determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. See 1825.102(b)(1) for the determination of nonavailability format.

1825.207 Solicitation provisions and contract clauses.

1825.207–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.225–71, Nondomestic Construction Materials, in all contracts for construction.

Subpart 1825.3—Balance of Payments Program

1825.304 Excess and near-excess foreign currencies. (NASA supplements paragraph (c))

(c) The NASA Headquarters Comptroller (Code B) is the designated official for making the determination of the feasibility of using excess or near-excess currency.

Subpart 1825.4—Trade Agreements

1825.400 Scope of subpart. (NASA supplements paragraph (b))

(b) The Buy American Act and the Balance of Payments Program apply to all acquisitions of Japanese end products or services in excess of $2,500.

1825.402 Policy. (NASA supplements paragraph (c))

(c)(3) Waiver under the Trade Agreements Act is not applicable to acquisitions of Japanese end products or services in excess of $2,500.

1825.403 Exceptions. (NASA supplements paragraph (c))

(c)(2) If a contracting officer considers an individual acquisition to be a purchase ''indispensable for national

security or for national defense purposes'' and appropriate for exclusion from the provisions of FAR 25.4 and of this Subpart 1825.4, the contracting officer shall submit a request with supporting rationale to the Headquarters Office of External Relations (Code I) for coordination with the Office of the U.S. Trade Representative.

1825.405 Procedures.

Solicitations shall require that applicable duty charges be included in the offered price of an eligible product, whether or not duty-free certificates are obtained. Duty charges shall be included in the price evaluation.

Subpart 1825.6—Customs and Duties

1825.602 Policy.

NASA has statutory authority to exempt certain articles from import duties, including articles that will be launched into space, spare parts for such articles, ground support equipment, and unique equipment used in connection with an international program or launch service agreement. This authority is fully described in 14 CFR 1217.

1825.603 Procedures.

1825.603–70 NASA procedures.

(a) The following officials are authorized to certify that articles are eligible for duty free entry:

(1) Procurement officers, through delegation from the Associate Administrator for Procurement, for articles imported into the United States that are acquired by NASA or other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is, or will be, vested in the U.S. Government in accordance with the terms of the contract or subcontract. All duty-free certificates (see paragraph (b) of this section for format) shall be coordinated with the center Chief Counsel. Procurement officers shall maintain a record of each certification and make this record available for periodic review by NASA Headquarters and the U.S. Customs Service.

(2) The Associate Administrator for External Relations (Code I) for articles imported pursuant to international agreements.

(3) The Associate Administrator for Space Flight (Code M) for articles imported under agreements other than those identified in paragraph (a) (1) and (2) of this section, including launch service agreements.

(b) Procurement officers shall complete Customs Service Form CF 7501 (Entry Summary) and an appropriate certification when approving duty free exemption for articles acquired by NASA.

(1) For a single import, use the following certification format specified in 14 CFR 1217.104(a):

Articles for the National Aeronautics and Space Administration

Item 9808.00.80, Harmonized Tariff Schedule of the United States

Program: (Insert name of NASA Program) _____

I hereby certify that the articles identified in *[attached invoice]* are being imported for the use of the National Aeronautics and Space Administration (NASA) in accordance with 9808.00.80, Harmonized Tariff Schedule of the United States.

Name _____

Date _____

(2) For a series of imports under a specific acquisition, use the certification format in paragraph (b)(1) of this section and add the following paragraph specified in 14 CFR 1217.104(c) before the signature block:

Before this certification is used to obtain duty-free entry of these articles, a cognizant NASA official at the receiving NASA Installation, who is designated by the Installation Director, shall verify in writing that specifically identified articles to be entered on a particular date are the articles described in this certification or its attachments. This verification and this certification shall be presented to the U.S. Customs-Service at the time of entry for the particular articles is sought.

1825.605 Contract clause.

1825.605–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.225–73, Duty-Free Entry Supplies, in solicitations and contracts when the supplies that will be accorded duty-free entry are identifiable before award. Insert the supplies determined in accordance with FAR 25.604 and 1825.603.

Subpart 1825.9—Additional Foreign Acquisition Clauses

1825.901 Omission of Audit clause. (NASA supplements paragraph (c))

(c) The Administrator is the approval authority for waivers.The contracting officer shall submit the waiver request, consisting of the determination and findings prescribed in FAR 25.901(d) and any relevant supporting information, to the Headquarters Office of Procurement (Code HS).

Subpart 1825.70—Foreign Contracts

1825.7000 Scope of subpart.

This subpart prescribes policy and procedures for negotiating foreign contracts.

1825.7001 Definition.

Foreign contract acquisition, as used in this subpart, means the acquisition by negotiation of supplies or services, including construction work and research and development when the work is to be performed outside the United States, its possessions, and Puerto Rico by a foreign government or instrumentality thereof or by a foreign private contractor. The term does not include—

(a) Negotiation of government-to-government agreements;

(b) Negotiation of contracts with domestic concerns involving work to be performed outside the United States, its possessions, and Puerto Rico;

(c) Contracts with the Canadian Commercial Corporation; or

(d) Acquisition of books and periodicals from foreign sources of supply.

1825.7002 Policy.

(a) Each contracting office (including NMO JPL) shall coordinate with the Headquarters Office of External Relations (Code I), before initiating any foreign contract acquisition if the acquisition is valued above $100,000 or involves—

(1) Importing or exporting goods or technical data from or to a country listed in 22 FR 126.1 (a) or (d) (Subchapter M, the International Traffic in Arms Regulations);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR Part 121 which require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or technical data on the Commerce Control List at 15 CFR Part 744 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or technical data from or to an entity listed in 15 CFR Part 744, Supplements 1 through 3; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V.

(b) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through Headquarters Code I.

1825.7003 Procedure.

The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in 1825.7002 shall submit the following information to Headquarters Code I—

(a) The name of the foreign entity, the country or countries involved, and the purpose of the contract;

(b) The Space Act agreement(s) involved (pursuant to NMI 1050.9), if any,

(c) A description of the goods or technical data requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and

(d) The reason why the acquisition is being placed with a foreign entity.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1827—PATENTS, DATA, AND COPYRIGHTS

Sec.
1827.000 Scope of part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.
1827.302 Policy.
1827.303 Contract clauses.
1827.303–70 NASA solicitation provisions and contract clauses.
1827.304 Procedures.
1827.304–1 General.
1827.304–2 Contracts placed by or for other Government agencies.
1827.304–3 Contracts for construction work or architect-engineer services.
1827.304–4 Subcontracts.
1827.304–5 Appeals.
1827.305 Administration of the patent rights clauses.
1827.305–3 Follow-up by Government.
1827.305–370 NASA patent rights and new technology follow-up procedures.
1827.305–371 New technology reporting plan.
1827.305–4 Conveyance of invention rights acquired by the Government.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause.
1827.405 Other data rights provisions.
1827.406 Acquisition of data.
1827.406–70 Report of work.
1827.408 Cosponsored research and development activities.
1827.409 Solicitation provisions and contract clauses.
1827.409–70 NASA contract clause.

Subpart 1827.6—Foreign License and Technical Assistance Agreements

1827.670 Space Station technical data and goods.
1827.670–1 Policy.
1827.670–2 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36715, July 9, 1997, unless otherwise noted.

1827.000 Scope of part.

This part prescribes NASA policies, procedures, and clauses pertaining to patents, data, and copyrights. The provisions of FAR Part 27 apply to NASA acquisitions unless specifically excepted in this part.

Subpart 1827.3—Patent Rights Under Government Contracts

1827.301 Definitions.

Administrator, as used in this subpart, means the Administrator of NASA or a duly authorized representative.

Contract, as used in this subpart, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, in lieu of the definition in FAR 27.301, as used in this subpart, means conceived or first actually reduced to practice; provided that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Reportable item, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract.

Subject invention, in lieu of the definition in FAR 27.301, as used in this subpart, means any reportable item that is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

1827.302 Policy. (NASA supplements paragraphs (a), (b), (c), (d), (e), (f), (g), and (i)).

(a) Introduction.

(i) NASA policy with respect to any invention, discovery, improvement, or innovation made in the performance of

work under any NASA contract or subcontract with other than a small business firm or a nonprofit organization and the allocation to related property rights is based upon Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) (the Act); and, to the extent consistent with this statute, the Presidential Memorandum or Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Section 1(d)(4) of Executive Order 12591. NASA policy with respect to any invention made in the performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. Chapter 18, as amended.

(ii) NASA contracts subject to Section 305 of the Act shall ensure the prompt reporting of reportable items in other to protect the Government's interest and to provide widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(b) Contractor right to elect title.

(i) For NASA contracts, the contractor right to elect title only applies to contracts with small businesses and non-profit organizations. For other business entities, see subdivision (ii) of this paragraph.

(ii) Contractor right to request a waiver of title. For NASA contracts with other than a small business firm or a nonprofit organization (contracts subject to Section 305 of the Act), it is the policy of NASA to waive the rights (to acquire title) of the United States (with the reservation of a Government license set forth in FAR 27.302(c) and the march-in rights of FAR 27.302(f) and 1827.302(f)) in and to any subject invention if the Administrator determines that the interests of the United States will be served. This policy, as well as the procedures and instructions for such waiver of rights, is stated in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1. Waiver may be requested in advance of contract award for any or all of the subject inventions, or for individually identified subject inventions reported under the contract. When waiver of rights is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver shall be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(iii) It is also a policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board, any subject invention reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

(c) Government license. For each subject invention made in the performance of work under a NASA contract with other than a small business firm or nonprofit organization and for which waiver of rights has been granted in accordance with 14 CFR Section 1245, Subpart 1, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign Government in accordance with any treaty or agreement of the United States.

(d) Government right to receive title. Under any NASA contract with other than a small business or nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), title to subject inventions vests in NASA when the determinations of Section 305(a)(1) or 305(a)(2) have been made. The Administrator may grant a waiver of title in accordance with 14 CFR Section 1245.

(e) Utilization reports. For any NASA contract with other than a small business firm or a nonprofit organization, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(f) March-in rights. For any NASA contract with other than a small business firm or a nonprofit organization, the march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(g) Preference for United States industry. Waiver of the requirement for the agreement for any NASA contract with other than a small business firm or a nonprofit organization shall be in accordance with the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(i) Minimum rights to contractor.

(1) For NASA contracts with other than a small business firm or a nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with 14 CFR 1245, a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The Administrator is the approval authority for revoking or modifying a license. The procedures for revocation or modification are described in 37 CFR 404.10 and 14 CFR 1245.108.

1827.303 Contract clauses. (NASA supplements paragraphs (a), (b), (c) and (d))

(a)1)(A) See 1827.303–70(a).

(B) To qualify for the clause at FAR 52.227–11, a prospective contractor may be required to represent itself as either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with FAR 19.302 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as nonprofit organization.

(b)(1)(ii) FAR 52.227–12 is not used in NASA contracts. See instead 1827.303–70(b).

(c)(1)(ii) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, see 1827.303–70(f).

(2) See 1827.303–70 (b) and (f).

(d)(1) When one of the conditions in FAR 27.303(d)(1) (i) through (iv) is met, the contracting officer shall consult with the installation intellectual property counsel to determine the appropriate clause.

1827.303–70 NASA solicitation provisions and contract clauses.

(a) When the clause at FAR 52.227–11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227–11.

(b) The contracting officer shall insert the clause at 1852.227–70, New Technology, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 305(a) of the Act), if the contract is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

(3) Development of any process or technique for attaining a NASA objective not readily attainable through the practice of a previously developed process or technique.

(4) Testing of, evaluation of, or experimentation with a machine, process, concept, or technique to determine whether it is suitable or could be made suitable for a NASA objective.

(5) Construction work or architect-engineer services having as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work.

(6) The operation of facilities or the coordination and direction of the work of others, if these activities involve performing work of any of the types described in subparagraphs (a) through (e) of this paragraph.

(c) The contracting officer shall insert the provision at 1852.227–71, Requests for Waiver of Rights to Inventions, in all solicitations that include the clause at 1852.227–70, New Technology (see paragraph (b) of this section).

(d) The contracting officer shall insert the clause at 1852.227–72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form) or 1852.227–70, New Technology (see paragraph (c) of this section). It may also be inserted, upon consultation with the installation intellectual property counsel, in solicitations and contracts using another patent rights clause. The New Technology Representative shall be the Technology Utilization Officer or the Staff member (by titled position) having cognizance of technology utilization matters for the installation concerned. The Patent Representative shall be the intellectual property counsel (by titled position) having cognizance of patent matters for the installation concerned.

(e) The contracting officer shall insert the provision at 1852.227–84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization.

(f) As authorized in FAR 27.303(c)(2), when work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, the clause at 1852.227–85, Invention Reporting and Rights—Foreign, shall be used unless the contracting officer determines, with concurrence of the installation intellectual property counsel, that the objectives of the contract would be better served by use of the clause at FAR 52.227–13, Patent Rights—Acquisition by the Government. For this purpose, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See FAR 27.304–4(a) regarding subcontracts with U.S. firms.)

1827.304 Procedures.

1827.304–1 General. (NASA supplements paragraphs (a), (b), (c), (f), (g), and (h))

(a) *Contractor appeals of exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, shall apply.

(b) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.302(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, apply for any invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization.

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.302–(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization.

(g) *Exercise of march-in rights.* For contracts with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(h) *Licenses and assignments under contracts with nonprofit organizations.* The Headquarters Associate General Counsel (Intellectual Property) (Code

GP) is the approval authority for assignments. Contractor requests should be made to the Patent Representative designated in the clause at 1852.227–72 and forwarded, with recommendation, to Code GP for approval.

1827.304–2 Contracts placed by or for other Government agencies. (NASA supplements paragraph (a))

(a)(3) When a contract is placed for another agency and the agency does not request the use of a specific patent rights clause, the contracting officer, upon consultation with the installation intellectual property counsel, may use the clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form) as modified by 1852.227–11 (see 1827.303–70(a)) or 1852.227–70, New Technology (see 1827.303–70(b)).

1827.304–3 Contracts for construction work or architect-engineer services. (NASA supplements paragraph (a))

(a) For construction or architect-engineer services contracts with other than a small business or nonprofit organization, see 1827.303–70(b).

1827.304–4 Subcontracts. (NASA supplements paragraph (a))

(a)(i) Unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(A) The clause at 1852.227–70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.303–70(b) (1)–(6).

(B) The clause at FAR 52.227–11, Patent Rights—Retention by the Contractor (Short Form), modified by 1852.227–11 (see 1827.303–70(a)), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, or research work.

(ii) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the intellectual property counsel.

1827.304–5 Appeals.

FAR 27.304–5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

1827.305 Administration of the patent rights clauses.

1827.305–3 Follow-up by Government.

1827.305–370 NASA patent rights and new technology follow-up procedures.

(a) For each contract containing a patent rights clause or the clause at 1852.227–70, New Technology, the contracting officer shall take the following actions:

(1) Furnish, or require the contractor or furnish directly, the New Technology Representative and the Patent Representative a copy of each contract (and modifications thereto), and copies of the final technical report, interim technical progress reports, and other pertinent material provided under the contract, unless the representatives indicate otherwise; and

(2) Notify the New Technology Representative as to which installation organizational element has technical cognizance of the contract.

(b) The New Technology Representative shall take the following actions:

(1) Review the technical progress of work performed under the contract to ascertain whether the contractor and its subcontractors are complying with the clause's reporting and recordkeeping requirements;

(2) Forward to the Patent Representative copies of all contractor and subcontractor written reports of reportable items and disclosures of subject inventions, and a copy of the written statement, if any, submitted with the reports.

(3) Consult with the Patent Representative whenever a question arises

as to whether a given reportable item is to be considered a subject invention and whether it was made in the performance of work under the contract.

(4) Forward to the Patent Representative all correspondence relating to inventions and waivers under the New Technology clause or election of title under the Patent Rights—Retention by the Contractor (Short Form) clause.

(5) Upon receipt of any final report required by the clause, and upon determination that the contract work is complete, determine whether the contractor has complied with the clause's reporting requirements. If so, the New Technology Representative shall certify compliance, obtain the Patent Representative's concurrence, and forward the certification to the contracting officer.

(c) The Patent Representative shall review each reportable item to ascertain whether it is to be considered a subject invention, obtain any determinations required by paragraph (b) of the clause at 1852.227–70, New Technology, and notify the contractor. As to any subject invention, the Patent Representative shall:

(1) Ensure that the contractor has provided sufficient information to protect the Government's rights and interests in it and to permit the preparation, filing, and prosecution of patent applications;

(2) Determine inventorship;

(3) Ensure the preparation of instruments establishing the Government's rights' and

(4) Conduct selected reviews to ensure that subject inventions are identified, adequately documented, and timely reported or disclosed.

(d) Either the New Technology Representative or the Patent Representative, in consultation with the other, may prepare opinions, make determinations, and otherwise advise the contracting officer with respect to any withholding of payment under paragraph (g) of the clause at 1852.227–70, New Technology. Either the New Technology Representative or the Patent Representative may represent the contracting officer for the purpose of examining the contractor's books, records, and other documents in accordance with paragraph (f) of the clause and take corrective action as appropriate. However, no action may be taken by either the New Technology Representative or the Patent Representative that would constitute a final decision under the Disputes clause, involve any change or increase in the work required to be performed under the contact that is inconsistent with any right of appeal provided in FAR 27.304–5 or 14 CFR 1245, Subpart 1, or otherwise be outside the scope of the contract.

(e) The contracting officer shall not approve release of final payment under the contract and, if applicable, any reserve set aside under the withholding provisions of the clause for deficiencies and delinquent reporting not corrected as of the time of the submission of the final report by the contractor until receipt of the New Technology Representative's certification of compliance, and the Patent Representative's concurrence.

1827.305–371 New technology reporting plan.

In contracts with an estimated cost in excess of $2,500,000 (or less when appropriate) that contain the clause at 1852.227–70, New Technology, the contracting officer may require the contractor to submit for post-award Government approval a detailed plan for new technology reporting that demonstrates an adequate understanding of and commitment to the reporting requirements of the clause.

1827.305–4 Conveyance of invention rights acquired by the Government. (NASA supplements paragraph (a))

(a) When the Government acquires the entire right to, title to, and interest in an invention under the clause at 1852.227–70, New Technology, a determination of title is to be made in accordance with Section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(a)), and reflected in appropriate instruments executed by NASA and forwarded to the contractor.

Subpart 1827.4—Rights in Data and Copyrights

1827.404 Basic rights in data clause. (NASA supplements paragraphs (d), (e), (f), (g), (h), and (i))

(d) *Protection of limited rights data specified for delivery*. The contracting officer shall consult with the installation patent or intellectual property counsel regarding any questions concerning the delivery of limited rights data and/or the use of Alternate II that may arise from an offeror's response to the provision at FAR 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

(e) *Protection of restricted computer software specified for delivery*. The contracting officer shall consult with the installation patent or intellectual property counsel regarding any questions concerning the delivery of restricted computer software and/or the use of Alternate III that may arise from an offeror's response to the provision at FAR 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, or during negotiations.

(f) *Copyrighted data*.—(1)(ii) The contracting officer shall consult with the installation patent or intellectual property counsel before granting permission for a contractor to claim copyright subsisting in data, other than computer software, first produced under the contract.

(iv) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for obtaining a copyright license of a different scope than set forth in subparagraph (c)(1) of the clause at FAR 52.227–14, Rights in Data—General, for any contract or class of contracts.

(2)(i) The procurement officer is the approval authority for obtaining a copyright license of a different scope than that set forth in subparagraph(c)(2) of the clause at FAR 52.227–14 for any contract or class of contracts.

(g) *Release, publication, and use of data*.

(3)(A) NASA's intent is to ensure the most expeditious dissemination of computer software developed by it or its contractor. Accordingly, when the clause at FAR 52.227–14, Rights in Data-General, is modified by 1852.227–14 (see 1827.409(a)), the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission.

(B) The contracting officer may, in consultation with the installation patent or intellectual property counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of a contract if:

(a) The contractor has identified an existing commercial computer software product line or proposes a new one and states a positive intention of incorporating any computer software first produced under the contract into that line, either directly itself or through a licensee;

(b) The contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost-sharing, or by contributing resources (including but not limited to agreement to provide continuing maintenance and update of the software at no cost for Governmental use); or

(c) The concurrence of the Headquarters Office of Aeronautics Commercial Technology Division (Code RW) is obtained.

(C)(a) The contractor's request for permission in accordance with 1827.404(g)(3)(A) may be made either before contract award or during contract performance.

(b) Any permission granted in accordance with 1827.404(g)(3)(B) (a) or (b) shall be by express contract provision (or amendment) overriding subparagraph (d)(3) or FAR 52.227–14, Rights in Data—General, (as modified by 1852.227–14), rather than by deleting it. The contract provision may contain appropriate assurances that the computer software will be incorporated into an existing or proposed new commercial computer software product line within a reasonable time and/or that the agreed contributions to the Government are fulfilled, with contingencies enabling the Government to

obtain the right to distribute the software for commercial use, including the right to obtain assignment of copyright where applicable, in order to prevent the computer software from being suppressed or abandoned by the contractor.

(c) Any permission granted in accordance with 1827.404(g)(3)(B)(c) may be either by deleting subparagraph (d)(3) or by special contract provision, as appropriate.

(d) When any permission to copyright is granted, any copyright license retained by the Government shall be of the same scope as set forth in subparagraph (c)(1) of the clause at FAR 52.227–14 and without any obligation of confidentiality on the part of the Government, unless in accordance with 1827.404(g)(3)(B)(b) the contributions of the Contractor may be considered ''substantial'' for the purposes of FAR 27.408 (i.e., approximately 50 percent), in which case rights consistent with FAR 27.408 may be negotiated for the computer software in question.

(D) If the contractor has not been granted permission to copyright, paragraph (d)(3)(ii) of the clause at FAR 52.227–14, Rights in Data—General (as modified by 1852.227–14) enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The contracting officer may, in consultation with the installation intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of Agency mission objectives, needed to support specific Agency programs, or necessary to meet statutory requirements.

(h) *Unauthorized marking of data.* The contracting officer shall consult with the installation patent or intellectual property counsel before taking any action regarding unauthorized markings of data under paragraph (e) of the clause at FAR 52.227–14, Rights in Data—General.

(i) *Omitted or incorrect notices.* The contracting officer shall consult with the installation patent or intellectual property counsel before agreeing to add or correct any markings on data under paragraph (f) of the clause at FAR 52.227–14, Rights in Data—General.

§ 1827.405 Other data rights provisions. (NASA supplements paragraphs (b) and (c))

(b)(2) *Acquisition of existing computer software.* See 1827.409(k) (i)–(ii) and 1827.409–70 for modifications and alternatives to the clause at 52.227–19.

(c) *Contracts awarded under the Small Business Innovative Research (SBIR) Program.* If, during the performance of an SBIR contract (Phase I or Phase II), the need arises for NASA to obtain delivery of restricted computer software as defined in the clause at FAR 52.227–20, Rights in Data—SBIR Program, and the contractor agrees to such delivery, the restricted computer software may be required with restricted rights by modification of the contract or under an agreement incorporated in and made part of the contract, using the restricted rights set forth in FAR 27.404(e) and the related restrictions as a guide.

1827.406 Acquisition of data. (NASA supplements paragraph (a))

(a) *General.* Requirements for delivering technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which they are being procured. Normally, a vendor's manuals for installation, operation, or maintenance and repair and/or form, fit, and function data are adequate.

1827.406–70 Reports of work.

(a) When considered necessary for monitoring contract performance, contracting officers shall require contractors to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement) or in cost-reimbursement supply contracts. This purpose may be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(1) *Monthly progress reports.* Reports should be in narrative form, brief, and

informal. They should include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(2) *Quarterly progress reports.* In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(3) *Final report.* This report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract.

(4) *Report Documentation Page.* The contractor should include a completed Report Documentation Page (SF 298) as the final page of each report submitted.

(b) The contracting officer shall consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the contract.

(c) A reproducible copy and a printed, or reproduced, copy of the reports shall be sent to the NASA Center for Aero-Space Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934 (see 1835.070(a)).

1827.408 Cosponsored research and development activities.

The contracting officer shall consult with the installation patent or intellectual property counsel before limiting the acquisition of or acquiring less than unlimited rights to any data developed under contracts involving cosponsored research and development activities.

1827.409 Solicitation provisions and contract clauses. (NASA supplements paragraph (a), (b), (c), (d), (e), (i), and (k))

(a) The contracting officer shall add subparagraph (3) set forth in 1852.277–14 to paragraph (d) of the clause at FAR 52.227–14, Rights in Data—General, except in solicitations and contracts for basic or applied research with universities or colleges.

(b) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for use of Alternate I. An example of its use is where the principal purpose of the contract (such as a contract for basic or applied research) does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or under any anticipated follow-on contracts relating to the same subject matter).

(c) The contracting officer shall normally add the disclosure purposes listed in FAR 27.404(d)(1) (i)–(v) to subparagraph (g)(2). However, the contracting officer may, upon consultation with the installation patent or intellectual property counsel, make deletions from the specific purposes listed. If all are deleted, the word ‘‘None’’ must be inserted. Additions to those specific purposes listed may be made only with the approval of the procurement officer and concurrence of the installation patent or intellectual property counsel.

(d) The contracting officer shall consult with the installation patent or intellectual property counsel regarding the acquisition of restricted computer software with greater or lesser rights than those set forth in Alternate III. Where it is impractical to actually modify the notice of Alternate III, this may be done by express reference in a separate clause in the contract or by a collateral agreement that addresses the change in the restricted rights.

(e) The contracting officer, with the concurrence of the installation intellectual property counsel, is the approval authority for the use of Alternate IV in any contract other than a contract for basic or applied research to be performed solely by a college or

university on campus (but not for the management or operation of Government facilities).

(i) The contract officer shall modify the clause at FAR 52.227–17, Rights in Data—Special Works by adding paragraph (f) as set forth in 1852.227–17.

(k)(i) The contracting officer shall add paragraph (e) as set forth in 1852.227–19(a) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is contemplated that updates, correction notices, consultation information, and other similar items of information relating to commercial computer software delivered under a purchase order or contract are available and their receipt can be facilitated by signing a vendor supplied agreement, registration forms, or cards and returning them directly to the vendor.

(ii) The contracting officer shall add paragraph (f) as set forth at 1852.227–19(b) to the clause at FAR 52.227–19, Commercial Computer Software—Restricted Rights, when portions of a contractor's standard commercial license or lease agreement consistent with the clause, Federal laws, standard industry practices, and the FAR are to be incorporated into the purchase order or contract.

(iii) See 1827.409–70.

1827.409–70 NASA contract clause.

The contracting officer shall use the clause at 1852.227–86, Commercial Computer Software—Licensing, in lieu of FAR 52.227–19, Commercial Computer Software—Restricted Rights, when it is considered appropriate for the acquisition of existing computer software in accordance with FAR 27.405(b)(2).

Subpart 1827.6—Foreign License and Technical Assistance Agreements

1827.670 Space Station technical data and goods.

1827.670–1 Policy.

NASA and its contractors shall comply will all applicable export control laws, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120–130, and the Export Administration Regulations (EAR), 15 CFR Parts 730–799, with respect to the transfer of technical data and goods to any International Space Station program multilateral partner or contractor. When authorized, certain technical data in support of the International Space Station program may be exported to a foreign recipient specified in writing by the contracting officer. Contracting officers, or designees, will assure that any transfer of data to a foreign recipient will be in compliance with all applicable directives, including the NASA Export Control Program.

1827.670–2 Contract clause.

The contracting officer shall insert the clause at 1852.227–87, Transfer of Technical Data Under Space Station International Agreements, in all solicitations, contracts, and purchase orders in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR Parts 120–130, or the Export Administration Regulations (EAR), 15 CFR Parts 730–799 in accordance with the NASA Export Control Program.

PART 1828—BONDS AND INSURANCE

Subpart 1828.1—Bonds

Sec.
1828.101 Bid guarantees.
1828.101–70 NASA solicitation provision.
1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.
1828.103–70 Subcontractors performing construction work under nonconstruction contracts.
1828.103–71 Solicitation requirements and contract clauses.
1828.106 Administration.
1828.106–6 Furnishing information.

Subpart 1828.2—Sureties

1828.202 Acceptability of corporate sureties.
1828.203 Acceptability of individual sureties.

Subpart 1828.3—Insurance

1828.307 Insurance under cost-reimbursement contracts.
1828.307–1 Group insurance plans.
1828.307–2 Liability.
1828.307–70 Insurance of industrial facilities.

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
1828.311–1 Contract clause.
1828.311–2 Agency solicitation provisions and contract clauses.
1828.370 Fixed-price contract clauses.
1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.
1828.372 Clause for minimum insurance coverage.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55765, Oct. 29, 1996, unless otherwise noted.

Subpart 1828.1—Bonds

1828.101 Bid guarantees.

1828.101–70 NASA solicitation provision.

The contracting officer shall insert the provision at 1852.228–73, Bid Bond, in construction solicitations where offers are expected to exceed $100,000 and a performance bond or a performance and payment bond is required (see FAR 28.102 and 28.103). The contracting officer may increase the amount of the bid bond to protect the Government from loss, as long as the amount does not exceed $3 million.

1828.103 Performance and payment bonds and alternative payment protections for other than construction contracts.

1828.103–70 Subcontractors performing construction work under nonconstruction contracts.

(a) The contracting officer shall require prime contractors on nonconstruction contracts to obtain the following performance and/or payment protection from subcontractors performing construction work:

(1) Performance and payment bonds when the subcontract construction work is in excess of $1000,000 and is determined by NASA to be subject to the Miller Act.

(2) An appropriate payment protection determined according to FAR 28.102–1(b)(1) when the subcontract construction work is greater than $25,000 but not greater than $100,000.

(b) The contracting officer shall establish the penal amount in accordance with FAR 28.102–2 based on the subcontract value.

(c) The bonds shall be provided on SF 25, Performance Bond, and SF 25A, Payment Bond. These forms shall be modified to name the NASA prime contractor as well as the United States of America as obligees.

1828.103–71 Solicitation requirements and contract clause.

When performance and payment bonds or alternative payment protections are required from subcontractors performing construction work under nonconstruction prime contracts, the contracting officer shall follow the procedures in FAR 28.102–3. When alternative payment protections are required, insert a clause substantially the same as FAR 52.228–13, Alternative Payment Protections, appropriately modified.

1828.106 Administration.

1828.106–6 Furnishing information. (NASA supplements paragraph (c))

(c) The contracting officer is the agency head's designee.

Subpart 1828.2—Sureties

1828.202 Acceptability of corporate sureties. (NASA supplements paragraph (d))

(d) Contracting officers may obtain access to Department of Treasury Circular 570 through the internet at http://www.ustreas.gov/treasury/bureaus/finman/c570.html.

1828.203 Acceptability of individual sureties. (NASA supplements paragraph (g))

(g) Notification of suspected criminal or fraudulent activities, with all supporting documentation, shall be submitted to the Headquarters Office of Procurement (Code HS).

Subpart 1828.3—Insurance

1828.307 Insurance under cost-reimbursement contracts.

1828.307–1 Group insurance plans. (NASA supplements paragraph (a))

(a) The procurement officer is the approval authority.

1828.307–2 Liability. (NASA supplements paragraph (b))

(b)(2)(A) The procurement officer may approve a requirement for property damage liability insurance when:

(a) A commingling of operations permits property damage coverage at a nominal cost to NASA under insurance carried by the contractor in the course of its commercial operations; or

(*b*) The contractor is engaged in the handling of high explosives or in extra hazardous research and development activities undertaken in populated areas.

(B) In all other circumstances, the Associate Administrator for Procurement (Code HS) is the approval authority.

1828.307–70 Insurance of industrial facilities.

When industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the contracting officer, the contractor or lessee shall ensure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the manner and to the same extent as required in FAR 28.307–2.

1828.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1828.311–1 Contract clause.

The contracting officer shall insert the clause at FAR 52.228–7, Insurance-Liability to Third Persons, as prescribed in FAR 28.311–1 unless waived by the procurement officer.

1828.311–2 Agency solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 1852.228–71, Aircraft Flight Risks, in all cost-reimbursement contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except when the aircraft are covered by a separate bailment.

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228–70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228–70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume this risk, the clause at 1852.228–70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228–71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228–70 is used, the term ‘‘Contractor’s premises’’ shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor’s premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities, NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each party also waive their right to bring claims against other parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228–72, Cross-waiver of Liability for Space Shuttle Services, in solicitations and contracts of $100,000 or more when the work to be performed involves ''Protected Space Operations'' (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228–78, Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches, in solicitations and contracts of $100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to such agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to that particular launch.

(d) The contracting officer shall insert the clause at 1852.228–76, Cross-Waiver of Liability for Space Station Activities, in solicitations and contracts of $100,000 or more when the work is to be performed involves ''Protected Space Operations'' (relating to the Space Station) as that term is defined in the clause.

(e) At the contracting officer's discretion, the clauses prescribed by paragraphs (b), (c), and (d) of this section may be used in solicitations, contracts, new work modifications, or extensions, to existing contracts under $100,000 involving Space Shuttle activities, ELV launch services, or Space Station activities, respectively, in appropriate circumstances. Examples of such circumstances are when the value of contractor property on a Government installation used in performance of the contract is significant, or when it is likely that the contractor or subcontractor will have its valuable property exposed to risk or damage caused by other participants in the Space Shuttle services, ELV launches, or Space Station activities.

1828.372 Clause for minimum insurance coverage.

In accordance with FAR 28.306(b) and 28.307, the contracting officer may insert a clause substantially as stated at 1852.228–75, Minimum Insurance Coverage, in fixed-price solicitations and in cost-reimbursement contracts. The contracting officer may modify the clause to require additional coverage, such as vessel liability, and higher limits if appropriate for a particular acquisition.

PART 1829—TAXES

Subpart 1829.1—General

Sec.
1829.101 Resolving tax problems.

Subpart 1829.2 Federal Excise Taxes

1829.203 Other Federal tax exemptions.
1829.203–70 NASA Federal tax exemptions.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55767, Oct. 29, 1996, unless otherwise noted.

Subpart 1829.1—General

1829.101 Resolving tax problems. (NASA supplements paragraph (a))

(a)(i) The Headquarters Office of the General Counsel (Code G) is the designated legal counsel for all external contacts on FAR part 29 tax issues, including communications with the Department of Justice, other Federal agencies, and any taxing authority.

(ii) Tax problems that cannot be solved readily by reference to FAR Part 29 shall be forwarded to Code G through the installation's Office of Chief Counsel. The following material, as applicable, shall be forwarded to Code G with a copy to the Associate Administrator for Procurement (Code HS):

(A) A comprehensive statement of pertinent facts, including documents and correspondence.

(B) A copy of the contract.

(C) A thorough review of the legal issues involved and recommended action.

(D) If appropriate, a statement of the problem's effects on acquisition policies and procedures, with recommendations.

Subpart 1829.2—Federal Excise Taxes

1829.203 Other Federal tax exemptions.

1829.203.70 NASA Federal tax exemptions.

(a) The Associate Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury Department) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Installations can obtain copies of the permit from the Headquarters Office of Procurement (Code HS).

(b) When purchasing spirits for use by NASA personnel, the contracting officer shall attach a copy of the permit to the contract. Upon receipt of the spirits, the permit shall be returned to the contracting officer unless future orders are anticipated.

(c) When a NASA contractor requires spirits to perform a NASA contract, the contracting officer shall furnish the contractor a copy of the permit to provide its vendor. Upon receipt of the spirits, the contractor shall return the permit to the contracting officer unless future orders are anticipated. In any event, the permit shall be returned upon completion of the contract.

(d) The contracting officer shall post a copy of the permit for inspection.

PART 1830—COST ACCOUNTING STANDARDS

Subpart 1830.2—CAS Program Requirements

Sec.
1830.201–5 Waiver.

Subpart 1830.70—Facilities Capital Employed for Facilities in Use and For Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.
1830.7001–1 Contract facilities capital estimates.
1830.7001–2 DD Form 1861 completion instructions.
1830.7001–3 Preaward FCCOM applications.
1830.7001–4 Postaward FCCOM applications.
1830.7002 Facilities capital employed for facilities under construction.
1830.7002–1 Definitions.
1830.7002–2 Cost of money calculations.
1830.7002–3 Representative investment calculations.
1830.7002–4 Determining imputed cost of money.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55767, Oct. 29, 1996, unless otherwise noted.

Subpart 1830.2—CAS Program Requirements

1830.201–5 Waiver.

The procurement officer shall forward all requests for waiver of CAS requirements to the Associate Administrator for Procurement (Code HC).

Subpart 1830.70—Facilities Capital Employed for Facilities in Use and for Facilities Under Construction

1830.7001 Facilities capital employed for facilities in use.

1830.7001–1 Contract facilities capital estimates.

To estimate facilities capital cost of money (FCCOM), the contracting officer shall use DD Form 1861, Contract Facilities Capital Cost of Money, after evaluating the contractor's cost proposal, establishing cost of money factors, and developing a prenegotiation cost objective.

1830.7001–2 DD For 1861 completion instructions.

(a) List overhead pools and direct-charging services centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(b) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective, and list them against each overhead pool and direct-charging service center.

(c) Multiply each allocation base by its corresponding cost of money factor to compute the FCCOM estimated to be incurred each year. The sum of these products represents the estimated contract FCCOM for the year's effort.

(d) Add the yearly estimates to calculate the total contract FCCOM.

1830.7001–3 Preaward FCCOM applications.

Apply FCCOM in establishing cost and price objectives as follows:

(a) *Cost objective.* Us the FCCOM with normal, booked costs in establishing a cost objective or the target cost of an incentive type contract. Do not subsequently adjust these target costs when actual cost of money rates become available during the contract performance period.

(b) *Profit/fee objective.* Do not include FCCOM in the cost base when establishing a prenegotiation profit/fee objective. Use only normal, booked costs in this cost base.

1830.7001–4 Postaward FCCOM applications.

(a) *Interim billings based on costs incurred.* (1) The contractor may include FCCOM in cost reimbursement and progress payment invoices. To determine the amount that qualifies as cost incurred, multiply the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. These FCCOM calculations are interim estimates subject to adjustment.

(2) As actual cost of money factors are finalized, use the new factors to calculate FCCOM for the next accounting period.

(b) *Final settlements.* (1) Contract FCCOM for final cost determination or repricing is based on each year's final cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF.

(2) Separately compute contract FCCOM in a manner similar to yearly final overhead rates. As in overhead rates, include in the final settlement an adjustment from interim to final contract FCCOM. Do not adjust the contract estimated or target cost.

1830.7002 Facilities capital employed for facilities under construction.

1830.7002–1 Definitions.

(a) *Cost of money rate* is either—

(1) The interest rate determined by the Secretary of the Treasury under Public Law 92–41 (85 Stat. 97); or

(2) The time-weighted average of such rates for each cost accounting period during which the capital asset is being constructed, fabricated, or developed.

(b) *Representative investment* is the calculated amount considered invested

by the contractor during the cost accounting period to construct, fabricate, or develop the capital asset.

1830.7002–2 Cost of money calculations.

(a) The interest rate referenced in 1830.7002–1(a)(1) is established semi-annually and published in the FEDERAL REGISTER during the fourth week of December and June.

(b) To calculate the time-weighted average interest rate referenced in 1830.7002–1(a)(2), multiply the rates in effect during the months of construction by the number of months each rate was in effect, and then divide the sum of the products by the total number of months.

1830.7002–3 Representative investment calculations.

(a) The calculation of the representative investment requires consideration of the rate or expenditure pattern of the costs to construct, fabricate, or develop a capital asset.

(b) If the majority of the costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor shall either:

(1) Determine a representative investment for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(c) If the costs were incurred in a fairly uniform expenditure pattern throughout the construction, fabrication, or development period, the contractor may either:

(1) Determine a representative investment for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(2) Treat month-end balances as individual representative investments.

(d) The method chosen by the contractor to determine the representative investment amount may be different for each capital asset being constructed, fabricated, or developed, provided the method fits the expenditure pattern of the costs incurred.

1830.7002–4 Determining imputed cost of money.

(a) Determine the imputed cost of money for an asset under construction, fabrication, or development by applying a cost of money rate (see 1830.7002–2) to the representative investment (see 1830.7002–3).

(1) When a representative investment is determined for a cost accounting period in accordance with 1830.7002–3(b)(1) or 1830.7002–3(c)(1), the cost of money rate shall be the time-weighted average rate.

(2) When a monthly representative investment is used in accordance with 1830.7002–3(b)(2) or 1830.7002–3(c)(2), the cost of money rate shall be that in effect each month. Under this method, the FCCOM is determined monthly, and the total for the cost accounting period is the sum of the monthly calculations.

(b) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the accounting period or the end of the construction, fabrication, or development period, whichever comes first.

(c) When the construction, fabrication, or development of an asset takes more than one accounting period, the cost of money capitalized for the first accounting period will be included in determining the representative investment for any future cost accounting periods.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1831.2—Contracts With Commercial Organizations

Sec.

1831.205 Selected costs.
1831.205–32 Precontract costs.
1831.205–70 Contract clause.
1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.
1831.205–671 Solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

Subpart 1831.2—Contracts with Commercial Organizations

1831.205 Selected costs.

1831.205–32 Precontract costs.

(1) Precontract costs are applicable only to sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts.

(2) The procurement officer is the approval authority for the use of precontract costs. Authorization shall be in writing and shall address the following:

(i) The necessity for the contractor to initiate work prior to contract award;

(ii) The start date of such contractor effort;

(iii) The total estimated time of the advanced effort; and

(iv) The cost limitation.

(3) Authorization to incur precontract costs shall be provided to the contractor in writing and shall include the following:

(i) The start date for incurrence of such costs;

(ii) The limitation on the total amount of precontract costs which may be incurred;

(iii) A statement that the costs are allowable only to the extent they would have been if incurred after formal contract award; and

(iv) A statement that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

1831.205–70 Contract clause.

The contracting officer shall insert the clause at 1852.231–70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized under 1831.205–32.

1831.205–670 Evaluation of contractor and subcontractor compensation for service contracts.

(a) The contracting officer shall evaluate the reasonableness of compensation for service contracts:

(1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of $500,000, and

(2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer shall ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

(1) The subcontract has a total potential value in excess of $500,000; and

(2) The cumulative value of all of a subcontractor's service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors shall be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also shall demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section shall be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, shall be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer shall ensure that the reasonableness of compensation for cost reimbursement subcontracts meeting the criteria in paragraphs (b) (1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award shall be documented in the contract file.

[62 FR 4467, Jan. 30, 1997]

1831.205–671 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 1852.231–71, Determination of Compensation, in solicitations for services which contemplate the award of a cost reimbursement or non-competitive fixed-price type service contract having a total potential value in excess of $500,000.

[62 FR 4467, Jan. 30, 1997]

PART 1832—CONTRACT FINANCING

Sec.
1832.006–2 Definitions.

Subpart 1832.1—Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.
1832.111–70 NASA contract clause.

Subpart 1832.2—Commercial Item Purchase Financing

1832.202–1 Policy.
1832.206 Solicitation provisions and contract clauses.

Subpart 1832.4—Advance Payments For Non-Commercial Items

1832.402 General.
1832.406 Letters of credit.
1832.407 Interest.
1832.409 Contracting officer action.
1832.409–1 Recommendation for approval.
1832.409–170 NASA procedure for approval.
1832.410 Findings, determination, and authorization.
1832.412 Contract clause.

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.
1832.501–1 Customary progress payment rates.
1832.501–2 Unusual progress payments.
1832.502 Preaward matters.
1832.502–2 Contract finance office clearance.
1832.502–4 Contract clauses.
1832.502–470 NASA contract clause.
1832.504 Subcontracts.

Subpart 1832.7—Contract Funding

1832.702 Policy.
1832.702–70 NASA policy.
1832.704 Limitation of cost or funds.
1832.704–70 Incrementally funded fixed-price contracts.
1832.705 Contract clauses.
1832.705–2 Clauses for limitation of cost or funds.
1832.705–270 NASA clauses for limitation of cost or funds.

Subpart 1832.9—Prompt Payment

1832.906 Contract financing payments.
1832.908 Contract clauses.
1832.970 Payments to Canadian Commercial Corporation.

Subpart 1832.10—Performance-Based Payments

1832.1004 Procedures.
1832.1005 Contract clauses.
1832.1006 Agency approvals.
1832.1009 Title.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55768, Oct. 29, 1996, unless otherwise noted.

1832.006–2 Definitions.

The Associate Administrator for Procurement is the Agency remedy coordination official.

Subpart 1832.1—Non-Commercial Item Purchase Financing

1832.111 Contract clauses for non-commercial purchases.

1832.111–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.232–79, Payment for On-Site Preparatory Costs, in solicitations and contracts for construction on a fixed-price basis when progress payments are contemplated and pro rata payment of on-site preparatory costs to the contractor is appropriate.

Subpart 1832.2—Commercial Item Purchase Financing

1832.202–1 Policy. (NASA supplements paragraph (b))

(b)(6) Advance payment limitations do not apply to expendable launch vehicle (ELV) service contracts. (see 1832.402).

1832.206 Solicitation provisions and contract clauses. (NASA supplements paragraph (g))

(g)(2) The installment payment rate shall be that which is common in the commercial marketplace for the purchased item. If there is no commonly used rate, the contracting officer shall determine the appropriate rate. In no case shall the rate exceed that established in the clause at FAR 52.232–30.

Subpart 1832.4—Advance Payments for Non-Commercial Items

1832.402 General. (NASA supplements paragraph (e))

(e)(1) The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for all advance payments except the following:

(A) The procurement officer is the approval authority for non-fee bearing contracts with domestic entities when the cumulative contract value is $25,000,000 or less, and for all increases to such contracts over $25,000,000 previously approved by Code HC as long as the advance payment amount outstanding at any time is not increased.

(B) The contracting officer is the approval authority for the following actions. In these cases, a findings and determination (see FAR 32.410) is not required.

(*a*) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I contracts. A class deviation has been signed, effective through September 30, 2000 (for SBIRs) and September 30, 1997 (for STTRs), authorizing use of advance payments on these contracts. The contracting officer shall annotate the contract file that the deviation is on file at the NASA Headquarters Office of Procurement (Code HC).

(*b*) Expendable launch vehicle (ELV) service contracts. 42 U.S.C. 2459c authorize advance payments for these contracts. The contracting officer shall document the contract file with the rationale for approving the use of advance payments.

(e)(2) All advance payment authorization requests, except those authorized by 1832.402(e)(1)(B), shall be coordinated with the installation Deputy Chief Financial Officer.

1832.406 Letters of credit. (NASA supplements paragraph (b))

(b)(1) Each installation is considered a contracting agency for the purposes of this requirement.

1832.407 Interest. (NASA supplements paragraph (d))

(d)(1) Advance payments without interest are authorized.

1832.409 Contracting officer action.

1832.409–1 Recommendation for approval.

1832.409–170 NASA procedure for approval.

In addition to the items listed in FAR 32.409–1, requests for Headquarters approval of advance payments (see 1832.402(e)(1)) shall include the following information:

(a) Name of the cognizant NASA Headquarters program or staff office;

(b) Name and phone number of the contracting officer or negotiator;

(c) A copy of the proposed advance payments clause;

(d) If a profit/fee is contemplated, the factors considered in determining the profit/fee (see subpart 1815.9);

(e) Information justifying the adequacy of security to cover the maximum advance payment amount at any time outstanding.

[61 FR 55769, Oct. 29, 1996, as amended at 62 FR 36721, July 9, 1997]

1832.410 Findings, determination, and authorization. (NASA supplements paragraph (b))

(b) Generally, the format in FAR 32.410 should be used, tailored as follows:

(i) In format subparagraph (a)(2), use the phrase ''Advance payments (In an amount not to exceed $* * * at any time outstanding)'' in all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the

contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(ii) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account if no special bank account is required.

(iii) Use format subparagraph (a)(6), and not (a)(7) or (a)(8).

(iv) At the end of format paragraph (b), use ''is in the public interest.''

(v) In format paragraph (c), use the phrase ''(the amount at any time outstanding)'' in all determinations and findings.

1832.412 Contract clause. (NASA supplements paragraphs (a), (e) and (f))

(a) When the clause at FAR 52.232–12, Advance Payments, is used, make the following modifications:

(i) In the ''Maximum Payment'' paragraph (either paragraph (e) of the basic clause and Alternative II, or paragraph (d) of Alternative V), in the sentence that begins ''When the sum of'', change the word ''When'' to lower case and insert before it: ''Unliquidated advance payments shall not exceed $. * * * at any time outstanding. In addition * * *''.

(ii) In paragraph (m)(1) delete ''in the form prescribed by the administering office'' and substitute ''on Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272–A, Federal Cash Transactions Report Continuation''.

(iii) Annotate the clause ''as modified by NASA (October 1996)''.

(e) See 1832.412(f).

(f) The contracting officer shall use Alternates IV and V when advance payments are provided on Phase I contracts of the Small Business Innovation Research (SBIR or Small Business Technology Transfer (STTR) programs. Annotate the clause ''as modified by NASA (October 1996)'', delete paragraph (a) of Alternate V, and substitute the following:

(f) Requirements for payment. Advance payments will be made under this contract upon receipt of invoices from the Contractor. Invoices should be clearly marked ''Small Business Innovation Research Contract'' or ''Small Business Technology Transfer Contract,'' as appropriate, to expedite payment processing. One-third of the total contract price will be available to be advanced to the contractor immediately after award, another one-third will be advanced three months after award, and the final one-third will be paid upon acceptance by NASA of the Contractor's final report. By law, full payment must be made no later than 12 months after the date that contract requirements are completed. The Contractor shall flow down the terms of this clause to any subcontractor requiring advance payments.

[61 FR 55769, Oct. 29, 1996, as amended at 62 FR 36721, July 9, 1997]

Subpart 1832.5—Progress Payments Based on Costs

1832.501 General.

1832.501–1 Customary progress payment rates. (NASA supplements paragraph (a))

(a) The customary progress payment rate for all NASA contracts is 85 percent for large business, 90 percent for small business, 95 percent for small disadvantaged business, and 100 percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. The contracting officer shall insert the applicable percentage in paragraphs (a) and (b) of the clause at FAR 52.232–16.

1832.501–2 Unusual progress payments.

The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for the use of unusual progress payments.

1832.502 Preaward matters.

1832.502–2 Contract finance office clearance.

The Director of the Headquarters Office of Procurement Analysis Division (Code HC) is the approval authority for the actions in FAR 32.502–2, except the Associate Administrator for Procurement (Code HC) is the approval authority for any deviations addressed in FAR 32.502–2(b).

1832.502–4 Contract clauses.

1832.502–470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232–82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

1832.504 Subcontracts. (NASA supplements paragraph (c))

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501–2.

Subpart 1832.7—Contract Funding

1832.702 Policy.

1832.702–70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in paragraph (a)(3) of this section applies):

(1) The total value of the contract (including options as defined in FAR subpart 17.2) is $1,000,000 or more.

(2) The period of performance under the contract overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at award.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions in 1832.702–70(a) (1) through (3) are met and the initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702–70 (a) through (c). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(e) A class deviation from the conditions set forth in paragraphs 1832.702–70 (a) through (c) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) Program (through September 30, 2000) and Phase II of the Small Business Technology Transfer (STTR) program (through September 30, 1997). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

1832.704 Limitation of cost or funds.

1832.704–70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232–77, Limitation of Funds (Fixed Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds in a specified amount for continued performance;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232–77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232–77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

1832.705 Contract clauses.

1832.705–2 Clauses for limitation of cost or funds.

1832.705–270 NASA clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232–77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-

price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232–81, Contract Funding, in Section B of solicitations and contracts containing the clause at FAR 52.232–22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

Subpart 1832.9—Prompt Payment

1832.906 Contract financing payments. (NASA supplements paragraph (a))

(a) Except as authorized in 1832.903, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the FEDERAL REGISTER (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

1832.908 Contract clauses. (NASA supplements paragraphs (c) and (d))

(c) When the clause at FAR 52.232–25, Prompt Payment, is used in contracting with the CCC subject to the conditions at 1832.970, make the following modifications:

(i) Insert ''17th'' in lieu of ''30th'' in paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii); and

(ii) Annotate the clause ''as modified by NASA (DATE)''.

(d) When a clause at FAR 52.232–25, 52.232–26 or 52.232–27 is used, the clause at 52.232–28 shall be used, modified as follows:

(i) Delete the words ''and contract number'' from paragraph (d).

(ii) Insert the following language in lieu of paragraph (b)(4):

''The Contractor shall submit a Standard Form 3881 to the installation awarding this contract. If a Standard Form 3881 previously submitted to the installation awarding this contract is still valid, resubmittal is not necessary, unless requested by NASA.''

(iii) Annotate the clause ''as modified by NASA (October 1996)''.

[61 FR 55769, Oct. 29, 1996, as amended at 62 FR 36721, July 9, 1997]

1832.970 Payments to Canadian Commercial Corporation.

Pursuant to the authority of FAR 32.904(a)(3), invoice and contractor financing payments for contracts (other than Fixed-Price Architect-Engineer Contracts, Construction Contracts, and contracts for meats, perishables and dairy products) with the Canadian Commercial Corporation (CCC) shall be made earlier than the standard contract payment due dates. Accordingly, the phrase ''the 17th day'' shall be used in lieu of the ''the 30th day'' at FAR 32.905(a)(1) and 32.906(a).

[62 FR 36721, July 9, 1997]

Subpart 1832.10—Performance-Based Payments

1832.1004 Procedure. (NASA supplements paragraph (b))

(b) (2) In determining the amount of performance-based payments, contracting officers shall ensure that the payments will not result in an unreasonably low or negative level of contractor investment. To make this assessment, contracting officers shall request the contractor to submit with its proposal a numeric and graphic funding profile

showing the cash flow and contractor investment in the contract.

1832.1005 Contract clauses. (NASA supplements paragraph (a))

(a) If the contract is for launch services, the contracting officer shall delete paragraph (f) of the clause at FAR 52.232–32 in accordance with 1832.1009.

1832.1006 Agency approvals.

Performance-based payments shall be approved in accordance with field installation procedures.

1832.1009 Title.

In accordance with 42 U.S.C. 2465d, NASA shall not take title to launch vehicles under contracts for launch services unless one of the exceptions in the law applies. However, the law does not eliminate NASA's right to take title to other property acquired or produced by the contractor under a contract containing a title provision.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

Sec.
1833.103 Protests to the agency.
1833.104 Protest to GAO.
1833.106 Solicitation provision and contract clause.
1833.106–70 Solicitation provision.

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.
1833.211 Contracting officer's decision.
1833.215 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55771, Oct. 29, 1996, unless otherwise noted.

Subpart 1833.1—Protests

1833.103 Protests to the agency. (NASA supplements paragraph (b))

(b) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)). The contracting officer shall advise the Headquarters Office of the General Counsel (Code GK) of the receipt of the protest and the planned and actual disposition. This paragraph does not apply when the protester has requested an independent review under the provision at 1852.233–70.

[62 FR 11108, Mar. 11, 1997]

1833.104 Protests to GAO. (NASA supplements paragraphs (a), (b), (c), and (f))

The Associate Administrator for Procurement is the sole authority for deciding whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with GAO other than in accordance with this part and other guidance provided by NASA Headquarters.

(a)(2) The Headquarters Office of Procurement (Code HS) shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral contracting officer notices shall be subsequently confirmed in writing, and the contracting officer shall also send a copy of the written confirmation to Code HS, the Headquarters Office of the General Counsel (Code GK), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to Code GK within 20 days after GAO notification of protest receipt. Also include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except the actions defined in paragraph (a)(3)(ii) (*a*) and (*b*) are not required if already accomplished:

(*a*) Send a copy of the protest file index to Code GK within 10 days of receipt of the request.

(*b*) Send a copy of the protest file to Code GK within 15 days of receipt of the request.

(*c*) With Code GK concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iii) Code GK shall submit the protest file to GAO.

(4)(i) Code GK shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) The Associate Administrator for Procurement (Code HS) is the approval authority for contract award.

(c)(1) The contracting officer shall consult Code HS before terminating a protested contract.

(2) See 1833.104(b)(1).

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to Code GK within 6 days of issuance of the GAO decision.

1833.106 Solicitation provision and contract clause. (NASA supplements paragraph (a))

(a) The contracting officer shall be the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233–2.

1833.106–70 Solicitation provision.

Contracting officers shall insert the provision at 1852.233–70 in all solicitations.

[62 FR 11108, Mar. 11, 1997]

Subpart 1833.2—Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Headquarters Officers of Inspector General (Code W) and the General Counsel (Code G).

1833.211 Contracting officer's decision. (NASA supplements paragraph (a))

(a)(4)(v) The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for hearing appeals of contracting officer final decisions. Accordingly, contracting officers shall cite that fact in the final decision letter, provide the Board's mailing address (Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041–3208), and include a notification that the Board's operating procedures appear in Title 48, Code of Federal Regulations, Chapter 2, Appendix A.

1833.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I whenever continued performance is vital to national security, the public health and welfare, important agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1834—MAJOR SYSTEM ACQUISITION

Subpart 1834.0—General

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1834.003 Responsibilities.

Subpart 1834.70—Acquisition of Major Systems

1834.7001 Definitions.
1834.7002 Phased acquisitions
1834.7003 Down selections in phased acquisitions.
1834.7003–1 Pre-solicitation planning.
1834.7003–2 Evaluation factors.
1834.7003–3 Down selection milestones.
1834.7003–4 Synopsis.
1834.7003–5 Progressive competition.
1834.7004 Contract clauses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4467, Jan. 30, 1997, unless otherwise noted.

Subpart 1834.0—General

1834.003 Responsibilities. (NASA supplements paragraph (a))

(a) NASA's implementation of OMB Circular No. A–109, Major Systems Acquisitions, and FAR part 34 is contained in this part and in NASA Policy Directive (NPD) 7120.4, ''Program/Project Management,'' and NASA Procedures and Guidance (NPG) 7120.5, ''Program/Project Management Guide''.

Subpart 1834.70—Acquisition of Major Systems

1834.7001 Definitions.

(a) Down-selection. In a phased acquisition, the process of selecting contractors for phases subsequent to the initial phase from among the preceding phase contractors.

(b) Major system. For NASA, ''major system'' is a program fitting the criteria of FAR 34.003(c) in lieu of the definition provided in FAR 2.101.

(c) Phased acquisition. A program comprised of several distinct steps or phases where the realization of program objectives requires a planned, sequential acquisition of each step or phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(d) Progressive competition. A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of this program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1834.7002 Phased acquisitions.

(a) In acquisitions subject to the provisions of OMB Circular No. A–109 and NPD 7120.4 and NPG 7120.5, or other similar phased acquisitions, it is NASA policy to ensure competition in the selection of contractors for award in each phase of the process not performed in-house.

(b) There are five phases in the life cycle of a NASA major system acquisition:

(1) Phase A, Preliminary Analysis, involves the analysis of alternate overall project concepts for accomplishing a proposed agency technical objective or mission.

(2) Phase 3, Definition, involves the detailed study, comparative analysis, and preliminary system design of selected Phase A concepts.

(3) Phase C, Design, involves the detailed system design (with mock-ups and test articles of critical systems and subsystems) of the systems design concept determined to provide the best overall system for the Government.

(4) Phase D, Development, involves final detailed design, fabrication, delivery of an operational system that meets program requirements.

(5) Phase E, Operations, involves operation and use of the system in its intended environment, continuing until the system leaves the agency inventory. This phase includes any system modifications and upgrades.

(c) The preferred approach in NASA for the acquisition of the phases of a Major System is the following:

(1) Phase A is accomplished primarily through in-house studies.

(2) Phases B, C, and D are acquired through a phased acquisition process in which two or more Phase B contracts are awarded competitively and then a down-selection is made among these contractors to determine the single combined Phase C/D awardee.

(3) Phase E is normally acquired separately.

(d) Each phase of a major system acquisition not performed in-house must be synopsized in accordance with FAR 5.201 and must include all the information required by FAR 5.207.

(e) Whether or not down-selection procedures are used, contracts awarded in phased acquisitions shall not include requirements for submission of subsequent phase proposals. Instead, proposals shall be requested through a solicitation or other appropriate mechanism (e.g., by letter when using the progressive competition technique). Priced options for preparation of subsequent phase proposals are prohibited.

(f) Time gaps between phases should be minimized in all major system phased acquisitions. Accordingly, early synopsis of subsequent phase competition is encouraged. Also, when sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. When appropriate, these activities should commence as early as practicable during the period of performance of a phase to ensure the expeditious award of the succeeding phase.

1834.7003 Down-selections in phased acquisitions.

1834.7003–1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the Phase B solicitation will also lead to Phase C/D award, the decision to use a down-selection strategy must be made prior to initiation of the Phase B acquisition. Accordingly, both phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or ASM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in the subsequent phase, down-selection is inappropriate. In this case, the major system acquisition phases should be contracted for separately without a down-selection between phases.

(c) With one exception, both the initial and subsequent phase(s) of a major system acquisition down-selection process are considered to be full and open competition if the procedures in 1834.7003–4 and 1834.7003–5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205, when appropriate.

1834.7003–2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that one of the Phase B contractors will also be the Phase C/D contractor, the Phase B offerors must clearly demonstrate the ability to perform the subsequent phases. The evaluation factors for Phase B award must specifically include the evaluation of the Phase B offerors' abilities to perform Phase C/D as well as Phase B.

1834.7003–3 Down-selection milestones.

The Phase B contracts should be structured to allow for down-selection at a discrete performance milestone such as a significant design review or at contract completion. This will avoid time gaps between phases and eliminate unnecessary duplication of effort and the need to terminate the remaining Phase B efforts of an unsuccessful

Phase C/D offeror. However, the appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if the acquisition strategy calls for formal completion of Phase B effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for Phase C/D award and performance to carry all Phase B contractors through PDR, the Phase B contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and Phase C/D performance begun at the completion of the PDR option. Any down-selection milestone must ensure that sufficient design maturity exists to allow for an informed selection decision leading to a successful completion of Phase C/D.

1834.7003–4 Synopsis.

(a) When the phased acquisition process identified in 1834.7002(c)(2) is used, the synopsis for the initial competitive phase, normally Phase B, should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved).

(2) Subsequent competitions for identified follow-on phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be automatically requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a ''progressive competition'' (see 1834.7003–5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsized.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered by the agency. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phases, normally a combined C/D, must identify the current phase contractors.

1834.7003–5 Progressive competition.

(a) To streamline the major system acquisition process, the preferred approach for NASA phased acquisitions is the ''progressive competition'' down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal

preparation instructions and evaluation factors. In addition, the prospective offerors must be advised of all requirements necessary for demonstration of a design maturity equivalent to that to the preceding phase contractors.

(c) Although a key feature of the progressive competition technique is that a formal solicitation is issued for the initial phase only, a new, formal solicitation may nonetheless be required for subsequent phases. When the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contract is invalidated, a new solicitation shall be issued for the next phase.

(d) Phase C/D proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, applies to this proposal due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the Phase B solicitation.

(5) All required clause changes applicable to new work effective since Phase B contract award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., Phase C/D small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition techniques should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the Phase B contractors, it is also likely that a new, formal solicitation is necessary for Phase C/D and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1834.7004 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.234–70, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique described in 1834.7003–5. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.234–71, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique described in 1834.7003–5. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

1835.003 Policy.
1835.015 Contracts for research with educational institutions and nonprofit organizations.
1835.016 Broad agency announcements.
1835.016–70 NASA Research Announcements.
1835.070 NASA contract clauses and solicitation provision.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4469, Jan. 30, 1997, unless otherwise noted.

1835.003 Policy.

See NPG 5800.1, Grant and Cooperative Agreement Handbook, for policy regarding the use of grants and cooperative agreements.

1835.015 Contracts for research with educational institutions and nonprofit organizations. (NASA supplements paragraph (a))

(a)(1)(iv) The research contract shall include a requirement that the contractor obtain the contracting officer's approval when it plans to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator or project leader.

1835.016 Broad agency announcements. (NASA supplements paragraphs (a) and (c))

(a)(i) The following forms of broad agency announcements (BAAs) are authorized for use:

(A) Announcements of Opportunity (see 1872).

(B) NASA Research Announcements (see 1835.016–70).

(C) Other forms of announcements approved by the Associate Administrator for Procurement (Code HS).

(ii) Other program announcements, notices, and letters not authorized by paragraph (a)(i) of this section shall not be used to solicit proposals that may result in contracts.

(c) BAAs may not preclude the participation of any offeror capable of satisfying the Government's needs unless a justification for other than full and open competition is approved under FAR 6.304.

1835.016–70 NASA Research Announcements

(a) Scope. An NRA is used to announce research interests in support of NASA's programs, and, after peer or scientific review using factors in the NRA, select proposals for funding. Unlike an RFP containing a statement of work or specification to which offerors are to respond, an NRA provides for the submission of competitive project ideas, conceived by the offerors, in one or more program areas of interest. An NRA shall not be used when the requirement is sufficiently defined to specify an end product or service.

(b) Issuance. (1) Before issuance, each field-generated NRA shall be approved by the installation director or designee, with the concurrence of the procurement officer, and each Headquarters-generated NRA shall be approved by the cognizant Program Associate Administrator or designee, with the concurrence of the Headquarters Offices of General Counsel (Code GK) and Procurement (Code HS). The NRA approval authority shall designate the selection official.

(2) The selecting official shall assure that the NRA is synopsized prior to issuance in accordance with FAR 5.201 and 1805.201. The synopsis shall be brief, and the technical section describing the area of interest should not exceed 50 words.

(3) If a Headquarters-generated NRA may result in awards by a NASA field installation, the issuing office shall notify the installation procurement officer and provide a copy of the NRA.

(4) The selecting official is responsible for the preparation and distribution of the NRA.

(5) NRAs normally shall remain open for at least 90 days.

(c) Content. The NRA shall consist of the following sections and items. The entire package shall be provided in response to requests.

(1) Cover. The cover shall display:

(i) ''OMB Approval Number 2700–0087'' in the upper right corner.

(ii) Title.

(iii) ''NASA Research Announcement Soliciting Research Proposals for the Period Ending

_____''.

(iv) NRA number.

(v) Official address for the office issuing the NRA.

(2) Summary and Supplemental Information. (i) The Summary and Supplemental Information should not exceed two pages and shall include:

(A) Title and NRA number.

(B) Introductory paragraphs describing the purpose of the NRA and the period for receipt of proposals.

(C) Address for submitting proposals.

(D) Number of copies required.

(E) Selecting official's title.

(F) Names, addresses, and telephone numbers for the technical and contracting points of contact.

(G) The following statement when the NRA is to be issued before funds are available:

Funds are not currently available for awards under this NRA. The Government's obligation to make award(s) is contingent upon the availability of appropriated funds from which payment can be made and the receipt of proposals that NASA determines are acceptable for award under this NRA.

(ii) The Summary and Supplemental Information may include estimates of the amount of funds that will be available and the number of anticipated

awards. A breakdown of the estimates by research area may also be shown.

(3) Technical Description. The first page shall contain the NRA number and title at the top. A brief description not exceeding two pages is preferable, but it should be detailed enough to enable ready comprehension of the research areas of interest. Specifications containing detailed statements of work should be avoided. Any program management information included must be limited to matters that are essential for proposal preparation.

(4) Instructions for Responding to NASA Research Announcements. The NRA shall contain instructions as stated in 1852.235–72 (see 1835.070(c)).

(d) Receipt of proposals, evaluation, and selection. (1) Proposals shall be protected as provided in 1815.508–70 and 1815.509–70.

(2) Late proposals and modifications shall be treated in accordance with 1815.412–70.

(3) The selection decision shall be made following peer or scientific review of a proposal. Peer or scientific review shall involve evaluation by an in-house specialist, a specialist outside NASA, or both. Evaluation by specialists outside NASA shall be conducted subject to the conditions in FAR 15.413–2(f) and 1815.413–2. After receipt of a proposal and before selection, scientific or engineering personnel shall communicate with an offeror only for the purpose of clarification (as defined in FAR 15.601), or to understand the meaning of some aspect of the proposal that is not clear, or to obtain confirmation or substantiation of a proposed approach, solution, or cost estimate.

(4) Competitive range determinations shall not be made, and best and final offers shall not be requested.

(5) Part of a proposal may be selected unless the offeror requests otherwise. In addition, changes to a selected proposal may be sought if (i) the ideas or other aspects of the proposal on which selection is based are contained in the proposal as originally submitted, and are not introduced by the changes; and (ii) the changes sought would not involve a material alteration to the requirements stated in the NRA. Changes that would affect a proposal's selection shall not be sought. When changes are desired, the selecting official may request revisions from the offeror or request the contracting officer to implement them during negotiations with the successful offeror(s). The changes shall not transfer information from one offeror's proposal to another offeror (see FAR 15.610(e)(1)). When collaboration between offerors would improve proposed research programs, collaboration may be suggested to the offerors.

(6) The basis for selection of a proposal shall be documented in a selection statement applying the evaluation factors in the NRA. The selection statement represents the conclusions of the selecting official and must be self-contained. It shall not incorporate by reference the evaluations of the reviewers.

(7) The selecting official shall notify each offeror whose proposal was not selected for award and explain generally why the proposal was not selected. If requested, the selecting official shall arrange a debriefing under FAR 15.1004, with the participation of a contracting officer.

(8) The selecting official shall forward to the contracting officer the following information:

(i) A copy of the NRA;

(ii) The results of the technical evaluation, including the total number of proposals received, the selection statement, and the proposal(s) selected for funding;

(iii) A description of any changes desired in any offeror's statement of work, including the reasons for the changes and any effect on level of funding;

(iv) If a contract will be used to fund the proposal, a description of deliverables, including technical reports, and delivery dates, consistent with the requirements of the NRA;

(v) A procurement request;

(vi) Comments on the offeror's cost proposal (either the selecting official's comments, which may be based on the reviewer's comments, or copies of the reviewers' comments with any different conclusions of the selecting official); these comments shall address the need for and reasonableness of travel, computer time, materials, equipment, subcontracted items, publication costs,

labor hours, labor mix, and other costs; and

(vii) A copy of the selected proposal as originally submitted, any revisions, and any correspondence from the successful offeror.

(9) The selecting official may provide to the contracting officer copies of the reviewers' evaluations. Reviewers' names and institutions may be omitted.

(10) The selecting official may provide each offeror whose proposal was selected for negotiation a notification stating:

(i) The proposal has been selected for negotiation;

(ii) The offeror's business office will be contacted by a contracting officer, who is the only official authorized to obligate the Government; and

(iii) Any costs incurred by the offeror in anticipation of an award are at the offeror's risk.

(e) Award. The contracting officer shall choose the appropriate award instrument. If a contract is selected, the contracting officer shall——

(1) Advise the offeror that the Government contemplates entering into negotiations; the type of contract contemplated; and the estimated award date, anticipated effort, and delivery schedule;

(2) Send the offeror a model contract, if necessary, including modifications contemplated in the offeror's statement of work, and request agreement or identification of any exceptions (the contract statement of work may summarize the proposed research, state that the research shall be conducted in accordance with certain technical sections of the proposal (which shall be identified by incorporating them into the contract by reference), and identify any changes to the proposed research);

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms;

(4) Conduct negotiations in accordance with FAR subparts 15.8 and 15.9, as applicable;

(5) Award a contract; and

(6) Comply with FAR subparts 4.6 and 5.3 on contract reporting and synopses of contract awards.

(f) Cancellation of an NRA. when program changes, program funding, or any other reasons require cancellation of an NRA, the office issuing the NRA shall notify potential offerors by using the mailing list of the NRA.

[62 FR 4469, Jan. 30, 1997, as amended at 62 FR 14017, Mar. 25, 1997]

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.235–70, Center for AeroSpace Information, in all research and development contracts and in cost-reimbursement supply contracts involving research and development work.

(b) The contracting officer shall insert the clause at 1852.235–71, Key Personnel and Facilities, in contracts when source selection has been substantially predicated upon the possession by a given offer or of special capabilities, as represented by key personnel or facilities.

(c) The contracting officer shall ensure that the provision at 1852.235–72, Instructions for Responding to NASA Research Announcements, is inserted in all NRAs. The instructions may be supplemented, but only to the minimum extent necessary.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.2—Special Aspects of Contracting for construction

Sec.
1836.203 Government estimate of construction costs.
1836.209 Construction contracts with architect-engineer firms.
1836.213 Special procedures for sealed bidding in construction contracting.
1836.213–3 Invitations for bids.
1836.213–4 Notice of Award. (NASA supplements paragraph (e))
1836.213–70 Additive and deductive items.

Subpart 1836.5—Contract Clauses

1836.570 NASA solicitation provisions and contract clause.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602–1 Selection criteria.
1836.602–2 Evaluation boards.
1836.602–4 Selection authority.
1836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
1836.602–70 Selection of architect-engineers for master planning.
1836.603 Collecting data on and appraising firms' qualifications.
1836.605 Government cost estimate for architect-engineer work.

Subpart 1836.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 62 FR 4471, Jan. 30, 1997, unless otherwise noted.

Subpart 1836.2—Special Aspects of Contracting for Construction

1836.203 Government estimate of construction costs.(NASA supplements paragraph (c))

(c)(i) If the acquisition is by sealed bidding, the contracting officer shall file a sealed copy of the detailed Government estimate with the bids until bid opening. After the bids are read and recorded, the contracting officer shall read the estimate, and record it in the same detail as the bids.

(ii) If the acquisition is by negotiation, the contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

1836.209 Construction contracts with architect-engineer firms.

(1) Except as indicated in paragraph (2) of this section, the Associate Administrator for Procurement (Code HS) is the approval authority.

(2) A construction contract may be awarded to the firm that designed the project (or its subsidiaries or affiliates) if the contract is awarded on the basis of performance specifications for the construction of a facility, and it requires the contractor to furnish construction drawings, specifications, or site adaptation drawings of the facility.

(3) In no case shall the firm that prepared the drawings and specifications supervise and inspect, on behalf of the Government, the construction of the facility involved.

1836.213 Special procedures for sealed bidding in construction contracting.

[62 FR 36721, July 9, 1997]

1836.213–3 Invitations for bids.

[62 FR 36721, July 9, 1997]

1836.213–4 Notice of Award. (NASA supplements paragraph (e))

(e) Contract delivery or performance schedules, commencement of work, or notices to proceed shall not be expressed in terms of a notice of award. (See 1814.408–1).

[62 FR 36721, July 9, 1997]

1836.213–70 Additive and deductive items.

When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for bids for a first or base bid item covering the work generally as specified and one or more additive or deductive bid items progressively adding or omitting specified features of the work in a stated order of priority. In such case, the contracting officer, before the opening of bids, shall record in the contract file the amount of funds available for the project and determine the low bidder and the items to be awarded in accordance with the provision at 1852.236–71, Additive or Deductive Items.

[62 FR 36721, July 9, 1997]

Subpart 1836.5—Contract Clauses

1836.570 NASA solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 1852.236–71, Additive or Deductive Items, in invitations for bids for construction when it is desired to add or deduct bid items to meet available funding.

(b) The contracting officer shall insert the provision at 1852.236–72, Bids

with Unit Prices, in invitations for bids for construction when the invitation contemplates unit prices of items.

(c) The contracting officer shall insert the clause at 1852.236–73, Hurricane Plan, in solicitations and contracts for construction at sites that experience hurricanes.

(d) The contracting officer shall insert the provision at 1852.236–74, Magnitude of Requirement, in solicitations for construction. Insert the appropriate estimated dollar range in accordance with FAR 36.204.

Subpart 1836.6—Architect-Engineer Services

1836.602 Selection of firms for architect-engineer contracts.

1836.602–1 Selection criteria. (NASA supplements paragraph (a))

(a)(2) The evaluation of specialized experience and technical competence shall be limited to the immediately preceding ten years.

(4) The evaluation of past performance shall be limited to the immediately preceding ten years.

(7) The architect-engineer selection board may also establish evaluation criteria regarding the volume of work previously awarded to the firm by NASA, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms, including minority-owned firms and firms that have not had prior NASA contracts.

1836.602–2 Evaluation boards. (NASA supplements paragraph (a))

(a) Installations shall establish an architect-engineer selection board to be composed of the selection authority and at least three voting members. Membership shall at least include: one currently registered architect or professional engineer, who shall serve as the board chairperson; an official from the requiring office; if appropriate, a technical official familiar with any unique subject matter critical to the requirement; and a procurement official (a contracting officer, if feasible) as an ad hoc advisor to the board. Where appropriate, the procurement official may serve as a voting member. Non-Government employees shall not be appointed as voting members.

1836.602–4 Selection authority. (NASA supplements paragraph (a))

(a) The selection authority shall be appointed in accordance with installation procedures.

1836.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The procedures at FAR 36.602–5 (a) or (b) may be used at the discretion of the selection authority.

1836.602–70 Selection of architect-engineers for master planning. (NASA supplements paragraphs (a) and (b))

(a) *Definition of master plan*. A master plan is an integrated series of documents presenting in graphic, narrative, and tabular form the present composition of the installation and the plan for its orderly and comprehensive development to perform its various missions in the most efficient and economical manner.

(b) *Selection*.

(1) Selection of an Architect-Engineer for the development of a master plan in connection with the establishment of a new NASA activity or installation shall be made by the Associate Administrator having institutional responsibility. The report of the architect-engineer selection board will be concurred in at NASA Headquarters by the Associate Administrator for Management Systems and Facilities, the Associate Administrator for Procurement, the Chief Financial Officer, and the General Counsel.

(2) The Associate Administrator for Management Systems and Facilities shall be responsible for the architect-engineer selection board report required by FAR 36.602–3(d) before presentation to the Associate Administrator having institutional responsibility.

1836.603 Collecting data on and appraising firms' qualifications.

The architect-engineer selection boards (see 1836.602–2) are designated as NASA's evaluation boards for the purposes of FAR 36.603.

1836.605 Government cost estimate for architect-engineer work. (NASA supplements paragraph (b))

(b) The contracting officer may disclose the overall amount of the Government estimate after award upon request of offerors.

Subpart 1836.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

1836.702 Forms for use in contracting for architect-engineer services. (NASA supplements paragraph (a))

(a)(i) Instructions for completing Standard Form 252, Architect-Engineer Contract, are as follows:

(a) Block 5-Project Title and Location. Include a short description of the construction project and the estimated cost of constructing the facilities for the project. If the space provided is insufficient, include a more detailed description in the contract's specification/work statement and identify the location of the more detailed description in Block 10.

(b) Block 6-Contract For (General description of services to be provided). Include a brief description of the services and state that the are fully set out in the specification/work statement. Clearly specify the date by which design services must be completed. If supervision and inspection services during construction are to be acquired, clearly specify the date by which they must be completed and add a statement that the Government may extend the period for their performance as provided in the Changes clause of the contract.

(c) Block 7-Contract Amount. If the contract is for both design and supervision and inspection services, set out the amounts for each effort separately.

(ii) The services to be furnished by an architect-engineer should be carefully defined during negotiation of the contract and a statement of them inserted in the contract's specification/work statement. The statement should clearly and concisely set forth the nature and extent of the services and include any special services, such as the nature and extent of subsurface exploration prior to designing foundations. A similar statement of supervision and inspection services should be inserted in the specification/work statement if supervision and inspection services are to be acquired.

PART 1837—SERVICE CONTRACTING

Subpart 1837.1—Service Contracts—General

Sec.
1837.101 Definitions.
1837.102 Policy.
1837.102–70 NASA policy.
1837.104 Personal services contracts.
1837.110 Solicitation provisions and contract clauses.
1837.110–70 NASA solicitation provision and contract clauses.
1837.170 Pension portability.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy.
1837.204 Guidelines for determining availability of personnel.

Subpart 1837.70—Acquisition of Training

1837.7000 Acquisition of off-the-shelf training courses.
1837.7001 Acquisition of new training courses.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4472, Jan. 30, 1997, unless otherwise noted.

Subpart 1837.1—Service Contracts—General

1837.101 Definitions.

Pension portability means the recognition and continuation in a successor service contract of the predecessor service contract employees' pension rights and benefits.

1837.102 Policy.

1837.102–70 NASA Policy.

To the maximum extent practicable, contracting officers shall acquire services on a performance based contracting basis.

1837.104 Personal services contracts. (NASA supplements paragraph (b))

(b) Section 203(c)(9) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(9)) authorizes NASA ''to obtain services as authorized by Section 3109 of Title 5, United States Code.'' It is NASA policy to obtain the personal services of experts and consultants by appointment rather than by contract. The policies, responsibilities, and procedures pertaining to the appointment of experts and consultants are in NMI 3304.1G.

1837.110 Solicitation provisions and contract clauses.

1837.110–70 NASA solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 1852.237–70, Emergency Evacuation Procedures, in solicitations and contracts for on-site support services where emergency evacuations of the NASA installation may occur, e.g., snow, hurricanes, tornadoes, earthquakes, or other emergencies.

(b) The contracting officer shall insert the clause at 1852.237–71, Pension Portability, in solicitations, contracts or negotiated contract modifications for additional work when the procurement officer makes the determination in 1837.170(a)(2).

(c) The contracting officer shall insert the provision at 1852.237–72, Identification of Uncompensated Overtime, in cost reimbursement contracts expected to exceed $1,000,000.

[62 FR 4472, Jan. 30, 1997, as amended at 62 FR 36721, July 9, 1997]

1837.170 Pension portability.

(a) It is NASA's policy not to require pension portability in service contracts. However, pension portability requirements may be included in solicitations, contracts, or contract modifications for additional work under the following conditions:

(1)(i) There is a continuing need for the same or similar services for a minimum of five years (inclusive of options), and, if the contractor changes, a high percentage of the predecessor contractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor contract were covered by a portable pension plan, a follow-on contract or a contract consolidating existing services is awarded, and the total contract period covered by the plan covers a minimum of five years (including both the predecessor and successor contracts); and

(2) The procurement officer determines in writing, with full supporting rationale, that such a requirement is in the Government's best interest. The procurement officer shall maintain a record of all such determinations.

(b) When pension portability is required, the plan shall comply with the requirements of the clause at 1852.237–71, Pension Portability, (see 1837.110–70(b)), and the contract shall also include a clear description of the plan, including service, pay, liabilities, vesting, termination, and benefits from prior contracts.

Subpart 1837.2—Advisory and Assistance Services

1837.203 Policy. (NASA supplements paragraph (c))

(c) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NMI 3304.1, Employment of Experts and Consultants).

1837.204 Guidelines for determining availability of personnel. (NASA supplements paragraphs (a), (b), (c), and (e))

(a)(i) Outside peer review evaluators may be used to evaluate SBIR, STTR, NRA, AO, and unsolicited proposals without making the determination of non-availability.

(ii) For all other actions, the NASA official one level above the NASA program official responsible for the evaluation shall make the determination, with the concurrence of the legal office. The contracting officer shall ensure that a copy of the determination is in the contract file prior to issuance of a solicitation.

(b) The official designated in paragraph (a)(ii) of this section is responsible for the actions required in FAR 37.204(b).

(c) The agreement shall be made by the program official responsible for the evaluation and the contracting officer.

(e) The Associate Administrator for Procurement (Code HS) is the approval authority for class determinations. The class determination request shall include the assessment required by FAR 37.204(b).

Subpart 1837.70—Acquisition of Training

1837.7000 Acquisition of off-the-shelf training courses.

The Training Act of 1958 (5 U.S.C. 4101 et seq.) may be used as the authority for training of NASA employees by, in, or through non-Government off-the-shelf training courses which are available to the public. These include established university catalog courses or commercial course offerings that are offered to the general public at catalog or market prices.

1837.7001 Acquisition of new training courses.

The acquisition of a new training course that must be developed to fulfill a specific NASA need shall be conducted in accordance with the FAR and the NFS.

PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 1829.1—General

Sec.

1839.105 Privacy.
1839.107 Contract clause.
1839.107–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 62 FR 4473, Jan. 30, 1997, unlessotherwise noted.

Subpart 1839.1—General.

1839.105 Privacy.

See 1804.470.

1839.107 Contract clause.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]

1839.107–70 NASA contract clause.

(a)(1) The contracting officer shall insert the clause substantially as stated at 1852.239–70, Alternate Delivery Points, in solicitations and contracts for information technology when:

(i) An indefinite delivery/indefinite quantity contract will be used or when the contract will include options for additional quantities; and

(ii) Delivery is F.O.B. destination to the contracting activity.

(2) When delivery is F.O.B. origin and Government bills of lading (GBL) are used, the contracting officer shall use the clause with its Alternate I.

[62 FR 4473, Jan. 30, 1997. Redesignated at 62 FR 36721, July 9, 1997]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1840—[RESERVED]

PART 1841—ACQUISITION OF UTILITY SERVICES

Subpart 1841.2—Acquiring Utility Services

Sec.
1841.203 GSA assistance.
1841.205 Separate contracts.
1841.205–70 Authorization for acquisition of wellhead natural gas.

Subpart 1841.3—Requests for Assistance

1841.301 Requirements.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.
1841.501–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 4474, Jan. 30, 1997, unless otherwise noted.

Subpart 1841.2—Acquiring Utility Services

1841.203 GSA assistance. (NASA supplements paragraph (a))

(a) Before soliciting technical assistance, technical personnel shall contact the Headquarters Environmental Management Division (Code JE).

1841.205 Separate contracts.

1841.205–70 Authorization for acquisition of wellhead natural gas.

(a) Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the acquisition of supplies rather than the acquisition of public utility services described in FAR Part 41. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with FAR 41.204.

(b) GSA provides assistance to Federal agencies in the acquisition of natural gas wellhead supplies. Contracting officers may obtain assistance from GSA in the acquisition of wellhead natural gas by contacting GSA at the address specified in FAR 41.301(a).

Subpart 1841.3—Requests for Assistance

1841.301 Requirements. (NASA supplements paragraph (a))

(a) Procurement officers shall submit requests for delegation of contracting authority directly to the cognizant GSA regional office after coordinating with the cognizant center technical office.

Subpart 1841.4—Administration

1841.402 Rate changes and regulatory intervention. (NASA supplements paragraph (b))

(b) A copy of all correspondence with GSA shall be provided to the Headquarters Office of Procurement (Code HS) at the time of its submittal to the GSA regional office.

Subpart 1841.5—Solicitation Provision and Contract Clauses

1841.501 Solicitation provision and contract clauses.

1841.501–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.241–70, Renewal of Contract, in solicitations and contracts for utility services if it is desirable that the utility service be provided under the same terms and conditions for more than 1 year.

PART 1842—CONTRACT ADMINISTRATION

Subpart 1842.1—Interagency Contract Administration and Audit Services

Sec.
1842.101 Policy.
1842.102 Procedures.
1842.102–70 Review of administration and audit services.
1842.170 Assignment of NASA personnel at contractor plants.

Subpart 1842.2—Assignment of Contract Administration

1842.202 Assignment of contract administration.
1842.203 Retention of contract administration.
1842.270 Contracting officer technical representative (COTR) delegations.
1842.271 NASA clause.

Subpart 1842.5—Postaward Orientation

1842.503 Postaward conferences.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.
1842.705–1 Contracting officer determination procedure.
1842.708 Quick-closeout procedure.
1842.708–70 NASA quick-closeout procedure.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrence.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1203 Processing agreements.
1842.1203–70 DOD processing of novation and change-of-name agreements on behalf of NASA.

Subpart 1842.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1842.1305 Contract clauses.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies.

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Observance of legal holidays.
1842.7002 Travel outside of the United States.

Subpart 1842.71—Submission of Vouchers

1842.7101 Submission of vouchers.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.
1842.7202 Contract clause.

Subpart 1842.73—Audit Tracking and Resolution

1842.7301 NASA external audit follow-up system.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14017, Mar. 25, 1997, unless otherwise noted.

Subpart 1842.1—Interagency Contract Administration and Audit Services

1842.101 Policy. (NASA supplements paragraph (a))

(a)(i) The Defense Contract Audit Agency (DCAA) has been designated as the DOD agency responsible for the performance of audit functions for NASA contracts, except those awarded to educational institutions for which other agencies have audit cognizance under OMB Circular No. 88, those with Canadian contractors, and those for which NASA will perform audits.

(ii) Cross-servicing arrangements are the responsibility of the Headquarters Office of External Relations (Code ID). Contracting officers should direct questions to the Headquarters Office of Procurement (Code HS).

1842.102 Procedures.

1842.102–70 Review of administration and audit services.

(a) NASA installations shall assess their delegations to DOD semiannually to determine changes in delegation patterns that could (1) result in significant changes in DOD manpower requirements or (2) have other important impacts on DOD contract administration activities. Events such as major program cutbacks or expansions, changes in locations of major programs, and sizable new acquisitions should be considered in the assessment.

(b) A summary of significant changes shall be submitted to the Headquarters

Office of Procurement (Code HK). The summary shall include—

(1) A description of the change in work requirements or delegation pattern;

(2) The estimated duration of the impact;

(3) The results of discussions with affected DOD contract administration offices including agreement and disagreements on the predicted impact on DOD in terms of changes in manpower requirements or other costs; and

(4) Any other significant impact on DOD or NASA resources or contract performance risk.

1842.170 Assignment of NASA personnel at contractor plants.

(a)(1) NASA personnel normally shall not be assigned at or near a contractor's facility to perform any contract administration functions listed in FAR 42.302(a). Before such an assignment is made, a written request shall be forwarded to the cognizant program director for approval with the concurrence of the Associate Administrator for Procurement (Code HS). The following supporting information shall be forwarded with the request to make the assignment:

(i) A statement of the special circumstances that necessitate the assignment.

(ii) The contract administration serves to be performed.

(iii) A summary of any discussions held with the cognizant contract administration organization.

(iv) A staffing plan covering three years or such shorter period as may be appropriate.

(2) The provisions of this paragraph (a) do not apply to NASA audit personnel assigned to the field installations, to NASA technical personnel covered by 1842.101 and paragraph (b) of this section, unless they are performing any contract administration functions listed in FAR 42.302(a), or to personnel assigned to contractors' plants on NASA or other Federal installations.

(b) NASA may assign technical personnel (such as quality assurance, reliability, or engineering representatives) to contractors' plants or laboratories to provide direct liaison with NASA and technical assistance and guidance to the contractor and DOD. The duties and responsibilities of these technical representatives shall be clearly defined and shall not conflict with, duplicate, or overlap with functions delegated to DOD personnel. NASA shall advise appropriate DOD and contractor organizations of the duties and responsibilities of NASA technical personnel.

(c) When a NASA resident office, including any assigned technical personnel, and a DOD contract administration office are performing contract administration functions for NASA contracts at the same contractor's facility, the two offices shall execute a written agreement clearly establishing the relationship between the two organizations and the contractor. The agreement should eliminate duplication in the performance of contract administration functions and minimize procedural misunderstandings between the two organizations. Such agreements shall be consistent with existing delegations to the contract administration offices concerned and shall specify the relationship of NASA nonprocurement resident personnel to their DOD and contractor counterparts if such personnel will be involved in any aspect of contract administration.

Subpart 1842.2—Assignment of Contract Administration

1842.202 Assignment of contract administration. (NASA supplements paragraphs (b) and (d))

(b) Withholding normal functions. (1) The following functions are normally retained by the contracting office.

(A) Approval of the final voucher (FAR 42.302(a)(7)).

(B) Countersigning NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved (FAR 42.302(a)(8)).

(C) Issuance of decisions under the disputes clause (FAR 42.302(a)(10)).

(D) Contract payment (FAR 42.302(a)(13)).

(E) Execution of supplement agreements involving spare parts or other items selected through provisioning procedures. However, delegation of the negotiation of supplemental agreements for spare parts and other items

and forwarding for approval and signature of the NASA contracting officer is permitted (FAR 42.302(a)(22)).

(F) Executive of supplemental agreements definitizing change orders (see FAR 42.302(b)(1)).

(G) Issuing termination notices and executing supplemental agreements for settlement of termination for default or for convenience of the Government. However, delegation of the negotiation of termination settlements and forwarding for approval and signature of the NASA contracting officer is permitted using NASA Form 1432 (FAR 42.302(a)(23)).

(H) Consent to placement of subcontracts under FAR 42.302(a)(51). (See 1844.202–1(a)).

(d) Transmittal and documentation. In addition to the instructions at FAR 42.202(d) (1) through (4), contracting officers shall—

(i) Send delegations to DOD contract administration offices in accordance with the instructions in the DOD Directory of Contract Administration Services Components (DLAH 4105.4).

(ii) At time of contract award, prepared and forward NASA Form 1430, Letter of Contract Administration Delegation, General, to the contract administration office. NASA Form 1430A, Letter of Contract Administration, Special Instructions, will supplement the NASA Form 1430, to modify previously delegated functions and provide additional or particular information considered necessary to ensure clear understanding of all delegated functions.

(iii) Forward NASA Form 1431, Letter of Acceptance of Contract Administration, with each NASA Form 1430 or 1430A. Contracting officers shall use the returned NASA Form 1431 as contract file documentation that the delegation has been accepted, modified or rejected by the contract administration office and as a reference for points of contract for each of the functional areas delegated.

(iv) Use NASA Form 1433, Letter of Audit Delegation, to delegate the audit function and to amend previous delegations. Distribute copies of the contract and NASA Form 1433 as follows:

(A) *Audit office:* One copy of the contract and three NASA Forms 1433. When the Department of Health and Human Services is designated as the audit office, item 12 on NASA Form 1433 shall be marked ''Not applicable.''

(B) *Contractor:* One NASA Form 1433.

(C) *Cognizant NASA fiscal or financial management office:* One NASA Form 1433.

(v) For contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Defense Production (Canada) (DDP) in accordance with agreements between NASA and DDP. Upon advice from DDP, CCC will certify the invoice and forward it with Standard Form 1034, Public Voucher, to the contracting officer for further processing and transmittal to the fiscal or financial management officer.

(vi) For contracts placed directly with Canadian firms, audits are requested by the contracting officer from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by SF 1034, are forwarded to the contracting officer for further processing and transmittal to the fiscal or financial management officer. Periodic advisory audit reports are furnished directly to the contracting officer.

1842.203 Retention of contract administration. (NASA supplements paragraph (a))

(a) The assignment of contract administration is optional for the following contracts:

(i) Research and development study contracts not involving deliverable hardware or Government furnished property.

(ii) Contracts with delivery schedules for 90 days or less.

(iii) Purchase orders without Government source inspection requirements.

(iv) Contracts requiring only on-site performance.

(v) Contracts requiring work in the vicinity of the awarding center where DOD contract administration services are not reasonably available.

1842.270 Contracting officer technical representative (COTR) delegations.

(a) Contracting officers may appoint a qualified Government employee to act as their technical representatives in managing the technical aspects of a particular contract. If necessary, the contracting officer may appoint an alternate COTR to act during short absences of the COTR. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses training, qualifications and experience commensurate with the duties and responsibilities to be delegated and the nature of the contract.

(b) NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation, shall be used to appoint COTRs. A COTR's duties and responsibilities may not be redelegated by the COTR and the COTR may be held personally liable for unauthorized acts. However, this does not prohibit the COTR from receiving assistance for the purpose of monitoring contractor progress and gathering information. When an individual is appointed as a COTR on more than one contract, separate delegations shall be issued for each contract. A separate NASA Form 1634 will be used to appoint an alternate COTR.

(c) A COTR delegation remains in effect throughout the life of the contract unless canceled in writing by the cognizant contracting officer or at any level above that contracting officer. The contracting officer may modify the delegation only by issuance of a new delegation canceling and superseding the existing delegation.

(d) A COTR shall not be authorized to initiate procurement actions or in any way cause a change to the contract or increase the Government's financial obligations. However, delegations may be made to construction contract COTRs to sign emergency on-site change orders with an estimated value not to exceed the value specified in writing by the contracting officer in the NASA Form 1634 but in no event to exceed $25,000.

(e) Each COTR shall acknowledge receipt and accept the delegation by signing the original delegation letter. The original of the COTR delegation letter shall be filed in the applicable contract file. Copies of the signed COTR delegation letter shall be distributed to the COTR, the contractor, and each cognizant contract administration office. Acknowledgment and distribution for terminations of COTR delegations and COTR delegations which revise authority, duties and responsibilities shall follow the same rules.

(f) Mandatory training for COTRs and their alternates shall include the following core topic areas: contracting authority; procurement integrity; performance-based contracting; contract modifications; surveillance plans; contracting for inherently governmental functions, personal services, and NASA policy on the acquisition of services; the Service Contract Act; the Anti-Deficiency Act; contract financial management; the ''Changes'' clause; the ''Disputes'' clause; the ''Inspection'' clause; Government property and policy procedures; and the ''Limitation of Funds'' and ''Limitation of Cost'' clauses. Procurement officers are responsible for assuring that the course(s) utilized by their installation address the mandatory core topics in sufficient detail for the purpose of COTR training.

(g) The contracting officer shall verify that the COTR has received the mandatory training before signing NASA Form 1634. If an urgent need arises for the appointment of a COTR and no trained and otherwise qualified individual is available, then the procurement officer may make a temporary COTR appointment not to exceed six months. Temporary appointments must be so identified and clearly reflect the appointment expiration date.

(h) No technical direction may be issued by a COTR relative to performance-based contract requirements or when serving under a temporary appointment.

1842.271 NASA clause.

Insert the clause at 1852.242–70, Technical Direction, when paragraph 3(m) of the NASA Form 1634 specifically authorizes a COTR to issue technical direction.

Subpart 1842.5—Postaward Orientation

1842.503 Postaward conferences. (NASA paragraphs (1) and (2))

(1) A postaward conference shall be held with representatives of the contract administration office when—

(i) A contract is expected to exceed $10,000,000;

(ii) Contract performance is required at or near a NASA installation or NASA-controlled launch site;

(iii) The delegation will impose an abnormal demand on the resources of the contract administration office receiving the delegation; or

(iv) Complex contract management problems are expected.

(2) Procurement officer approval is required to waive a post-award planning conference for contracts meeting any of the criteria in paragraph (1) of this section. The request for procurement officer approval to waive a post-award conference shall address action taken and planned to ensure effective communication with the contract administration office during the performance of the contract.

Subpart 1842.7—Indirect Cost Rates

1842.705 Final indirect cost rates.

1842.705–1 Contracting officer determination procedure. (NASA supplements paragraph (a))

(a) Applicability and responsibility. (i) Since many NASA contractors are under DOD's final overhead rate determination procedure, NASA's policy is to participate jointly with DOD for those companies where NASA has a major financial interest. The NASA participant shall be a representative from that installation having the predominance of NASA work.

(ii) When NASA has been assigned the final indirect cost rate determination authority, settlement of indirect costs shall be conducted by the cognizant NASA contracting officer (normally from the installation providing the preponderance of NASA funding).

1842.708 Quick-closeout procedure.

(a)(2)(ii) The 15 percent parameter does not apply to NASA contracts. Instead, perform a risk analysis that takes into consideration the contractor systems identified in FAR 42.708(a)(2)(ii), as well as the concerns of the cognizant contract auditor, and any other pertinent information.

[62 FR 36228, July 7, 1997]

1842.708–70 NASA quick-closeout procedures.

After a decision is made that the use of quick closeout is appropriate, the contracting officer shall:

(a) Obtain a written agreement from the contractor to participate in the quick-closeout process under FAR 42.708 for the selected contract(s).

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved.

(c) Notify the cognizant audit activity in writing, identify the contract(s), and request: (1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and (2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.

(e) Establish final indirect cost rates using one of the following rates:

(1) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(2) through (e)(6) of this section.

(2) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(3) through (e)(6) of this section.

(3) Recommended rates from the cognizant audit agency, the local pricing

office, another installation pricing office, or other recognized knowledgeable source.

(4) The contractor's negotiated billing rates, if less than paragraphs (e)(5) or (e)(6) of this section.

(5) The previous year's final rates.

(6) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established.

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

(g) For those contracts where the indirect cost rate negotiation function was delegated or falls under the cognizance of another agency, send a copy of the agreement to that office.

Subpart 1842.8—Disallowance of Costs

1842.803 Disallowing costs after incurrance. (NASA supplements paragraph (b))

(b) Auditor receipt of vouchers. (1) NASA has designated the contract auditor as the contracting officer's representative for—

(A) Reviewing vouchers received directly from contractors;

(B) Approving vouchers for provisional payment and sending them to the disbursing office;

(C) Reviewing completion/final vouchers and sending them to the designated contracting officer for approval.

(2)(A) When contract costs are questioned, the auditor shall prepare and send to the cognizant contracting officer NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved.

(B) After coordination with other NASA and Federal agency contracting officers administering contracts with the same contractor under which a NASA Form 456 or a DCAA Form 1 has been issued for the same items of cost, the NASA contracting officer shall take one of the following actions:

(a) Assign a notice number and sign the NASA Form 456.

(b) Issue a new NASA Form 456 suspending the costs rather than disapproving them pending resolution of the issues.

(c) Return the unsigned NASA Form 456 to the auditor with a detailed explanation of why the suspension or disapproval is not being signed, and process the contractor's claim for payment.

(C) When more than one NASA contract is affected by a notice, the NASA contracting officer with the largest amount of contract dollars affected is responsible for coordination of the NASA Form 456 with the other contracting officers, including those of other Federal agencies, listed in the notice.

(D) An original and three copies (which includes two acknowledgment copies, one each for return to the contracting officer and the auditor) of the NASA Form 456 shall be sent to the contractor by certified mail, return receipt requested; one copy shall be attached to the Standard Form 1034 and each copy of the Standard Form 1034A on which the deduction for the suspension/disapproval is made.

(E)(a) If the amount of the deduction is more than the amount of the public voucher, the installment method of deduction shall be applied to the current and subsequent public vouchers until the amount is fully liquidated. The deductions on any voucher may not exceed the voucher amount to avoid processing of a voucher in a credit amount. Public voucher(s) with zero amounts must be forwarded to the fiscal or financial management office for appropriate action.

(b) If deductions are in excess of contractor claims, recovery may be made through a direct refund from the contractor, in the form of a check payable to NASA, or by a set-off deduction from the voucher(s) submitted by the contractor under any other contract unless those contracts contain a ''no set-off'' provision. If a set-off is affected, the voucher(s) from which the deduction is made should be annotated to identify the contract and appropriation affected and the applicable NASA Form 456.

Subpart 1842.12—Novation and Change-of-Name Agreements

1842.1203 Processing agreements. (NASA supplements paragraphs (b) and (f))

(b) The installation shall immediately notify the Headquarters Office of Procurement (Code HS) of the request to execute a novation (successor-in-interest) or change-of-name agreement.

(f) The contracting officer shall forward one copy of the agreement to the Code HS.

1842.1203–70 DOD processing of novation and change-of-name agreements on behalf of NASA.

(a) Appendix E of the NASA/DOD Agreement for Contract Administration and Contract Audit Services authorizes DOD to process novation and change-of-name agreements on behalf of NASA. Copies of agreements executed by DOD on behalf of NASA are maintained by the Headquarters Office of Procurement (Code HS).

(b) Code HS is the Agency point of contact for issues related to proposed novation agreements. With the concurrence of Code HS, an installation may execute a separate agreement with the contractor.

Subpart 1842.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work

1842.1305 Contract clauses. (NASA supplements paragraph (b))

(b) FAR 52.242–15, Stop-Work Order, shall not be used in solicitations or contracts for research performed by educational or other nonprofit institutions.

Subpart 1842.14—Traffic and Transportation Management

1842.1405 Discrepancies incident to shipment of supplies. (NASA supplements paragraph (a))

(a) NASA personnel shall also report discrepancies and adjust claims for loss of and damage to Government property in transit in accordance with NHB 6200.1, NASA Transportation and General Traffic Management.

Subpart 1842.70—Additional NASA Contract Clauses

1842.7001 Observance of legal holidays.

(a) The contracting officer shall insert the clause at 1852.242–72, Observance of Legal Holidays, in contracts when work will be performed at a NASA installation.

(b) The clause shall be used with its Alternate I in cost-reimbursement contracts when it is desired that contractor employees not have access to the installation during Government holidays. This alternate may be appropriately modified for fixed-price contracts.

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when Alternate I is used and it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions.

1842.7002 Travel outside of the United States.

The contracting officer shall insert the clause at 1852.242–71, Travel Outside of the United States, in cost-reimbursement solicitations and contracts where a contractor may travel outside of the United States and it is appropriate to require Government approval of the travel.

Subpart 1842.71—Submission of Vouchers

1842.7101 Submission of vouchers.

(a) Vouchers shall be submitted in accordance with the clause at 1852.216–87, Submission of Vouchers for Payment.

(b) The auditor shall retain an unpaid copy of the voucher.

(c) When a voucher submitted in accordance with the clause at 1852.216–87 contains one or more individual direct freight charges of $100 or more, an additional copy of Standard Form 1034A and Standard Form 1035A shall be submitted and marked for return to the

contractor after payment. This copy shall be transmitted quarterly by the contractor with the freight bills to the General Services Administration. When a voucher is identified as the ''Completion Voucher,'' an additional copy shall be submitted for transmittal to the NASA contracting officer.

Subpart 1842.72—NASA Contractor Financial Management Reporting

1842.7201 General.

(a) Contracting officer responsibilities. (1) Contracting officers must ensure contracts require cost reporting consistent with both policy requirements and project needs. Contracting Officers shall monitor contractor cost reports on a regular basis to ensure cost data reported is accurate and timely.

Adverse trends or discrepancies discovered in cost reports should be pursued through discussions with financial and project team members.

(2) Whenever cost performance threatens contract performance, contracting officers shall require corrective action plans from the contractors.

(b) Reporting requirements. (1) Use of the NASA Contractor Financial Management Reports, the NASA form 533 series, is required on cost-type, price redetermination, and fixed-price incentive contracts when the following dollar, period of performance, and scope criteria are met:

Contract value/scope	Period of performance	533M	533Q
$500K to $999K	1 year or more	Required	Optional.
$1,000,000 and over	Less than 1 year	Required	Optional.
$1,000,000 and over	1 year or more	Required	Required.

(2) When it is probable that a contract will ultimately meet the criteria in paragraph (b)(1) of this section through change orders, supplemental agreements, etc., the reporting requirement must be implemented in the contract based on the estimated final contract value at the time of award.

(3) NF 533Q reporting may be waived by the contracting officer, with the concurrence of the center chief financial officer and cognizant project manager, for support service or task order contracts, when NF 533M reports and other data are sufficient to ensure accurate monthly cost accruals, evaluation of the contractor's cost performance, and forecasting of resource requirements.

(4) Where a specific contractual requirement differs from the standard system set forth in NPG 9501.2, NASA Contractor Financial Management Reporting, but is determined to be in the best interests of the Government and does not eliminate any of the data elements required by the standard NF 533 formats, it may be approved by the contracting officer with the concurrence of the center chief financial officer and the project manager. Such approval shall be documented and retained, with the supporting rationale, in the contract file.

(5) The contractor's internal automated printout reports may be substituted for the 533 reporting formats only if the substitute reports contain all the data elements that would be provided by the corresponding 533's. The contracting officer shall coordinate any proposed substitute with the installation financial management office.

(c) Contract requirements. (1) Reporting requirements, including a description of reporting categories, shall be detailed in the procurement request, and reports shall be required by inclusion of the clause prescribed in 1842.7202. The contract schedule shall include report addressees and numbers of copies. Reporting categories shall be coordinated with the center financial management office to ensure that data required for agency cost accounting will be provided by the reports. Reporting dates shall be in accordance with NPG 9501.2, except that earlier submission is encouraged whenever feasible. No due date shall be permitted which is later than the date by which the center financial management office needs the

data to enter an accurate monthly cost accrual in the accounting system.

(2) The contractor shall be required to submit an initial report in the NF 533Q format, time phased for the expected life of the contract, within 30 days after authorization to proceed has been granted. NF 533M reporting will begin no later than 30 days after incurrence of cost. NF 533Q reporting begins with the initial report.

1842.7202 Contract clause.

The contracting officer shall insert the clause at 1852.242–73, NASA Contractor Financial Management Reporting, in solicitations and contracts when any of the NASA Form 533 series of reports is required from the contractor.

[62 FR 36721, July 9, 1997]

Subpart 1842.73—Audit Tracking and Resolution

1842.7301 NASA external audit follow-up system.

(a) This section implements OMB Circular No. A–50, NASA Management Instruction (NMI) 9970.1A, Audit Follow-up, and NASA Audit Follow-up Handbook 9970.2, which provide more detailed guidance. Recommendations for external audits (contracts and OMB Circulars No. A–128, Audits of State and Local Governments, and A–133, Audits of Institutions of Higher Learning and Other Non-Profit Institutions) shall be resolved by formal review and approval procedures analogous to those at 1815.807–71.

(b) The external audit follow-up system tracks all contract and OMB Circular A–128 or A–123 audits where NASA has resolution and disposition authority. The objective of the tracking system is to ensure that audit recommendations are resolved as expeditiously as possible, but a maximum, within 6 months of the date of the audit report.

(c) (1) The identification and tracking of contract audit reports under NASA cognizance are accomplished in cooperation with DCAA by means of the DCAA form, Contract Audit Follow-up Summary Sheet. The use of this form by DCAA and NASA is covered in Chapter 6 of the NASA Audit Follow-up Handbook.

(2) Identification and tracking of A–128 and A–133 audit reports are accomplished in cooperation with the NASA Office of the Inspector General (OIG) by means of a transmittal memorandum. A transmittal memorandum is sent by the OIG to the procurement officer of each NASA field installation having an award (contract, grant, or other agreement) covered by the audit report. The transmittal memorandum will identify whether there were any audit findings.

(d)(1) Chapter 6 of the NASA Audit Follow-up Handbook identifies which contract audit reports are reportable semiannually to the Headquarters Office of Procurement (Code HC).

(2) Only trackable A–128 and A–133 audit reports involving the following shall be reported semiannually to Code HC—

(i) A significant management control issue; or

(ii) For an individual NASA award, either the lower of 10 percent or $10,000 of the costs incurred in the period covered by the audit are questioned; or for institution-wide issues, the lower of 10 percent or $10,000 of the total costs incurred involving Government funds for the period covered by the audit are questioned.

(e)(1) The resolution and disposition of contract audits is covered by Chapter 6 of the NASA Audit Follow-up Handbook.

(2) The resolution and disposition of A–128 and A–133 are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsibility of the procurement officer administering that award.

(ii) Audit findings having an institution-wide impact are the responsibility of the cognizant Federal agency or the agency responsible for oversight. OMB's January 6, 1986, FEDERAL REGISTER Notice (51 FR 552), titled ''Federal Agencies Responsible for Cost negotiation and Audit of State and Local Governments,'' provides cognizant agency assignments for OMB Circular A–128. For organizations subject to OMB Circular A–133, there is either a

cognizant agency or an oversight agency. The cognizant agency is the Federal agency that provides the predominant amount of direct funding to the recipient organization unless OMB makes a specific agency cognizant, in which case a notice will be published in the FEDERAL REGISTER. To provide for the continuity of cognizance, the determination of the predominant amount of direct funding will be based on the direct Federal awards expended in the recipient's fiscal years ending in 1996, 2000, and every fifth year thereafter. If there is no cognizant Federal agency, there is an agency responsible for oversight. The oversight agency is that agency which provides the predominant amount of direct funding. When there is no direct funding, the Federal agency with the predominant indirect funding is to assume the oversight responsibilities. In cases where NASA is the cognizant or oversight Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the field installation having the largest amount of direct funding, or, if there is no direct funding, the largest amount of indirect funding for the audited period. A copy of the memorandum disappointing the findings shall be provided by each field installation having resolution responsibility for the particular report to the OIG Center office within whose geographic area of responsibility the audited organization is located.

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

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1843.205 Contract clauses.
1843.205–70 NASA contract clause.

Subpart 1843.70—Undefinitized Contract Actions

1843.7001 Definitions.
1843.7002 Policy.
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Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.
1843.7102 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14022, Mar. 25, 1997, unless otherwise noted.

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243–1, Changes—Fixed Price; FAR 52.243–2, Changes—Cost Reimbursement; FAR 52.243–3, Changes—Time-and-Material or Labor-Hours; and FAR 52.243–4, Changes, the period within which a contractor must assert its rights to an equitable adjustment may be varied not to exceed 60 calendar days.

1843.205–70 NASA contract clause.

(a) The contracting officer may insert in contracts a clause substantially the same as 1852.243–70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract. A local format may be substituted for the MIL–STD–973 format.

(b) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

Subpart 1843.70—Undefinitized Contract Actions

1843.7001 Definitions.

Undefinitized contract action (UCA) means a unilateral or bilateral contract modification or delivery/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts and their modifications are governed by subpart 1816.6.)

1843.7002 Policy.

Undefinitized contract actions shall be executed by contracting officers on

an exception basis and shall be limited to the minimum urgent requirements. The contract file for all UCAs shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

1843.7003 Procedures.

(a) Issuance of undefinitized contract actions with a Government estimated cost or price over $1,000,000 must be approved in writing by the Center Director. This approval authority is not delegable. Issuance of undefinitized contract actions with a Government estimated cost or price less than or equal to $1,000,000 shall also be minimized but may be approved on an exception basis in accordance with installation procedures.

(b) (1) Undefinitized contract actions exceeding $1,000,000 approved by the Center Director shall be issued as bilateral agreements setting forth a ceiling price or ''not to exceed'' estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the ''not to exceed'' estimated cost figure shall be non-fee bearing. The ceiling price or ''not to exceed'' estimated cost figures shall be separately identified in the UCA instrument from the pricing structure of the basic contract.

(2) The Center Director may waive the ceiling price or ''not to exceed'' estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than $1,000,000 and not excepted under subpart 1843.7004, a 180 day funding profile shall be obtained from the contractor prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or price greater than $1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to provide the contracting officer visibility into actual costs incurred pending definitization. The contracting officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

1843.7004 Exceptions.

(a) Exceptions to the requirement for Center Director approval for issuance of undefinitized contract actions are—

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding;

(3) Urgent modification resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;

(4) Modifications to decrease the contract value; or

(5) Modification to letter contracts.

(b) The contract file for any of the modifications in paragraph (a) of this section shall cite the exception and include complete supporting rational for its applicability.

1843.7005 Definitization.

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitive UCAs within 180 from date of issuance.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

Subpart 1843.71—Shared Savings

1843.7101 Shared Savings Program.

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in cost savings subject to limits established in the contract. The contracting officer may require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings are being realized.

1843.7102 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.243–71, Shared Savings, in all solicitations and contracts expected to exceed $1,000,000, except those awarded under FAR part 12, NRA and AO procedures, or the SBIR and STTR programs.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1844.2—Consent to Subcontracts

Sec.

1844.201 Consent requirements.
1844.201–1 Fixed-price prime contracts.
1844.201–2 Cost reimbursement and letter prime contracts.
1844.202 Contracting officer's evaluation.
1844.202–1 Responsibilties.
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Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.
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1844.305 Granting, withholding, or withdrawing approval.
1844.305–70 Review of CPSR report.

AUTHORITY: 42 U.S.C. 2473(a)(1).

SOURCE: 62 FR 14023, Mar. 25, 1997, unless otherwise noted.

Subpart 1844.2—Consent to Subcontracts

1844.201 Consent requirements.

1844.201–1 Fixed-price prime contracts. (NASA supplements paragraph (b))

(b)(2) (A) In determining special surveillance consent requirements, the contracting officer should consider specific subcontract awards, as well as any individual systems, subsystems, components, technologies, and services that should have contracting officer consent prior to being subcontracted.

(B) For each planned contract award expected to exceed $1 million in total estimated value (inclusive of options), the contracting officer should consider such factors as the following to determine whether certain subcontractors require special surveillance:

(*a*) The degree of subcontract pricing uncertainties at the time of contract award;

(*b*) The overall quality of the contractor's approach to pricing subcontractors;

(*c*) The extent of competition achieved, or to be achieved, by the contractor in the award of subcontracts;

(*d*) Technical complexity and the critically of specific supplies, services, and technologies on the successful performance of the contract; and

(*e*) The potential impact of planned subcontracts on source selection or incentive arrangements.

(C) The contracting officer shall document results of the review in the contract file. For contract modifications and change orders, the contracting officer shall make the determination required by paragraph (b)(2)(B) of this section whenever the value of any subcontract resulting from the change order or modification is proposed to exceed $100,000 or is one of the number of subcontracts with a single subcontractor for the same or related supplies or services that are expected cumulatively to exceed $100,000.

1844.201–2 Cost reimbursement and letter prime contracts. (NASA supplements paragraph (c))

(c)(2) The policy in 1844.201–1(b)(2) shall be followed to determine whether certain subcontracts require special surveillance. In addition, any subcontract under a cost type prime contract shall be identified for special surveillance if consent was not provided at the time of contract award and cost of pricing data would be required in accordance with FAR 15.806–2(a) (1) or (2).

1844.202 Contracting officer's evaluation.

1844.202 Responsibilities. (NASA supplements paragraph (a))

(a) NASA contracting officers shall retain consent to subcontract authority unless delegation is approved in writing by the procurement officer.

1844.204 Contract clauses.

1844.204–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.244–70, Geographic Participation in the Aerospace Program, in all research and development solicitations and contracts of $500,000 or over that will be performed within the United States.

Subpart 1844.3—Contractors' Purchasing Systems Reviews

1844.302 Requirements.

1844.302–70 DCMC-conducted contractor purchasing system reviews.

For contracts within their cognizance, NASA contracting officers shall be aware of purchasing system approval status and should become actively involved with the Defense Contract Management Command (DCMC) in the Contractor Purchasing System Review (CPSR) process. Involvement should include the following:

(a) Verifying that CPSRs are being conducted in accordance with FAR 44.302.

(b) Ensuring that purchasing system review specifically includes the business unit performing the NASA contract.

(c) Actively participating as a team member, or arranging NASA representation, on DCMC CPSRs to review areas of NASA-specific interest. At a minimum, such participation or representation shall be arranged when the DCMC CPSR review involves—

(1) Contractors with major NASA programs;

(2) Contractors' business units where the total dollar value of NASA contracts is substantial; or

(3) Any contractor system where the contracting officer has special concerns.

(d) Ensuring that the selected CPSR sample to be reviewed reflects the level of NASA business in the contractor's purchasing organization.

(e) Providing to the cognizant DCMC CPSR team leader any areas of special emphasis regarding the contractor's purchasing system to ensure that the review is tailored to address any NASA concerns.

[62 FR 14023, Mar. 25, 1997, as amended at 62 FR 36721, July 9,1997]

1844.302–71 NASA-conducted contractor purchasing system reviews.

If a NASA activity is the cognizant contract administration officer, or after coordination with the cognizant DCMC CPSR office it is determined that a CPSR is required but cannot be accomplished by DCMC, then a CPSR should be conducted by NASA personnel. The NASA CPSR team leader:

(a) May use the DOD FAR Supplement, Contractor Purchasing System Review (CPSR) guidance, as a general guide to conducting the CPSR.

(b) May vary the scope of review depending on the contractor and contracts involved.

(c) Shall maintain close coordination with the cognizant ACO during CPSRs at contractors under DOD cognizance.

1844.304 Surveillance.

1844.304–70 Contracting officer surveillance.

(a) In the period between complete CPSRs, NASA contracting officers

shall maintain a sufficient level of surveillance to ensure contractor purchasing efforts in support of NASA contracts are accomplished in an appropriate manner and protect the interests of the Agency.

(b) Surveillance shall be accomplished primarily through performance of subcontract consent reviews. Other methods of surveillance, including periodic reviews of contractor purchasing records, may also be conducted. Contracting officers shall document the results of subcontract consent reviews and periodic reviews, maintaining a record of contractor subcontract or purchase order award performance on NASA contracts. Contractor performance shall be summarized on an annual basis and provided to the ACO cognizant of the contractor's purchasing system. Annual reports should summarize the number of consent reviews and other reviews conducted during the year by NASA representatives, and summarize the types and quantity of deficiencies identified during reviews, the need for special reviews, and recommended areas of emphasis during future CPSRs.

1844.305 Granting, withholding, or withdrawing approval.

1844.305–70 Review of CPSR reports.

ACO actions related to purchasing system approval have a potential impact on NASA contracting officer consent requirements. Accordingly, NASA contracting officers shall review system deficiencies documented in CPSR reports and when results of consent reviews and other sources conflict with CPSR or DOD surveillance conclusions, formally communicate such concerns to the ACO having cognizance of purchasing system approval. Significant issues or significant conflicts with DOD CPSR results should be formally referred to the Office of Procurement (Code HS).

PART 1845—GOVERNMENT PROPERTY

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Subpart 1845.70—[Reserved]

Subpart 1845.71—Forms Preparation

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Subpart 1845.72—Contract Property Management

1845.7201 Definitions.
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1845.7203 Delegations of property administration and plant clearance.
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1845.7206 Responsibilities of property administrators and plant clearance officers.
1845.7206–1 Property administrators.
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1845.7209–4 Financial reports.
1845.7210 Contractor utilization of Government property.
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1845.7210–2 Records of surveys.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36722, July 9, 1997, unless otherwise noted.

Subpart 1845.1—General

1845.102 Policy.

1845.102–70 NASA policy.

Government property shall not be provided to contractors unless all other alternatives are not feasible. The decision to provide Government property to contractors (whether Government-furnished or contractor-acquired) shall be made only after careful consideration of all relevant factors. Among these factors are the following:

(a) Providing Government property to contractors increases the Government's administrative burden and requires recordkeeping and personnel.

(b) Providing property may dilute the contractor's overall responsibility and weaken guarantees, end-item delivery requirements, and other contract terms.

(c) Providing property may make NASA responsible for delays in that the Agency assumes responsibility for scheduling delivery of the property.

1845.102–71 Solicitation and review procedures.

(a) Each solicitation, as applicable, shall include the following:

(1) A list of any Government property available to be furnished, quantities, locations, conditions, and any related information.

(2) A requirement that offerors identify any Government property in their possession proposed for use during contract performance. The items, quantities, locations, acquisition costs, and proposed rental terms must be provided, along with identification of the Government contract under which the property is accountable.

(3) A requirement that requested Government provided facilities be described and identified by the classifications in 1845.7101–1.

(4) A requirement that offerors provide, if applicable, the date of the last Government property control system review, a summary of the findings and recommendations, and contractor corrective actions taken.

(b) The contracting officer shall provide a copy of the solicitation (or contract if no solicitation is used) to the

center supply and equipment management officer (SEMO) for review for acquisitions with an estimated cost greater than $1,000,000, or for acquisitions over $50,000 when work is to be performed at the center, existing Government property is being furnished, or contract acquisition of Government property is required or permitted.

1845.104 Review and correction of contractors' property control systems. (NASA supplements paragraph (a))

(a) Property administration is normally delegated to DOD. When property administration is not delegated to DOD, NASA shall conduct the review of the contractor's property administration system in accordance with DOD 4161.2–M, Manual for the Performance of Contract Property Administration.

1845.106 Government property clauses. (NASA supplements paragraph (b))

(b) If NASA contemplates taking title to contractor acquired property under paragraph (c) of the clause at FAR 52.245–2, Government Property (Fixed-Price Contracts), the contracting officer shall list the applicable property in the contract as deliverable items.

1845.106–70 NASA contract clauses and solicitation provision.

(a) The contracting officer shall insert the clause at 1852.245–70, Contractor Requests for Government-Owned Equipment, in all solicitations and contracts that have the potential for contractor acquisition of equipment for the account of the Government that is not listed as a specific contract deliverable. See 1845.7102 for instructions on preparing DD Form 1419.

(b)(1) The contracting officer shall insert the clause at 1852.245–71, Installation-Accountable Government Property, in solicitations and contracts when Government property is to be made available to a contractor working on a NASA installation, and the Government will maintain accountability for the property. The contracting officer shall list in the clause the applicable property user responsibilities. For purposes of this clause, NASA installations include local off-site buildings owned or directly leased by NASA when the contractor does not have authority to acquire property for the account of the Government.

(2) Use of this clause is subject to the SEMO's concurrence that adequate installation property management resources are available for oversight of the property in accordance with all applicable NASA installation property management directives.

(3) The contracting officer shall identify in the contract the nature, quantity, and acquisition cost of such property and make the property available on a no-charge basis.

(4) The contracting officer shall use the clause with its Alternate I if the SEMO requests that the contractor be restricted from use of the center central receiving facility for the purposes of receiving contractor-acquired property.

(5) Contracting officers shall list separately in the contract any property provided under a FAR 52.245 Government property clause that remains accountable to the contractor during its use on the contract (such as property used at the contractor's or a subcontractor's off-site facility) and which is not also subject to the clause at 1852.245–71. The contracting officer shall address any specific maintenance considerations (e.g., requiring or precluding use of an installation calibration or repair facility) elsewhere in the contract.

(6) See 1845.106–70(e).

(c) The contracting officer shall insert the clause at 1852.245–72, Liability for Government Property Furnished for Repair and Services, in fixed-price solicitations and contracts (except for experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated) for repair, modification, rehabilitation, or other servicing of Government property, if such property is to be furnished to a contractor for that purpose and no other Government property is to be furnished. The contracting officer shall not require additional insurance under the clause unless the circumstances clearly indicate advantages to the Government.

(d) The contracting officer shall insert the clause at 1852.245–73, Financial

Reporting of NASA Property in the Custody of Contractors, in cost reimbursement contracts unless all property to be provided is subject to the clause at 1852.245–71, Installation-Accountable Government Property. The clause shall also be included in other types of contracts when it is known at award that property will be provided to the contractor or that the contractor will acquire property title to which will vest in the Government prior to delivery.

(e) When approved by the Logistics Management Office of the Headquarters Office of Management Systems and Facilities (Code JLG), the contracting officer shall insert the clause at 1852.245–74, Contractor Accountable On-Site Government Property, in lieu of the clause at 1852.245–71, in solicitations and contracts when accountability rests with an on-site contractor. The contracting officer's written request for approval shall include a determination of costs that will be (1) avoided (e.g., additional costs to the installation's property management systems and staffing) and (2) incurred (e.g., reimbursable costs of the contractor to implement, staff, and operate separate property management systems on-site, and resources needed for performance of, or reimbursement for, property administration) under contractor accountability.

(f) The contracting officer shall insert the clause at 1852.245–75, Title to Equipment, in solicitations and contracts where the clause at FAR 52.245–2 with its Alternate II or 52.245–5, with its Alternate I is used.

(g) The contracting officer shall insert the clause at 1852.245–76, List of Government-Furnished Property, in solicitations and contracts if the contractor is to be accountable under the contract for Government property.

(h) The contracting officer shall insert the clause at 1852.245–77, List of Installation-Accountable Property and Services, in solicitations and contracts that require performance at the center and authorize contractor use of property within the physical borders of the center.

(1) The contracting officer shall insert the provision at 1852.245–79, Use of Government-Owned Property, in all solicitations when Government property may be used by the contractor.

(j) The contracting officer shall insert the clause at 1852.245–80, Use of Government Production and Research Property on a No-Charge Basis, in solicitations and contracts when government property (real property, commercially available equipment, special test equipment, or special tooling) accountable under another contract(s) is authorized for use.

1845.106–71 Plant reconversion and plant clearance.

The Associate Administrator for Procurement (Code HS) is the approval authority for any solicitation provision or contract clause that would defer negotiation of costs for plant reconversion plant clearance until after award.

Subpart 1845.3—Providing Government Property to Contractors

1845.301 Definitions.

Facilities, as defined in the FAR, also include real property and commercially available equipment, whether owned or leased by NASA or reimbursed as a cost under the contract.

Provide, as used in this subpart in such phrases as ''Government property provided to the contractor'' and ''Government-provided property,'' means either to furnish, as in ''Government-furnished property,'' or to permit to be acquired, as in ''contractor-acquired property.'' See FAR 45.101 for definitions of ''contractor-acquired property'' and ''Government-furnished property.''

1845.302 Providing facilities.

1845.302–1 Policy. (NASA supplements paragraph (a))

(a) In addition to the exceptions listed in FAR 45.302–1(a), existing NASA-owned facilities (whether contractor acquired or government furnished) being used by a contractor may be retained for the remainder of the contract period and furnished under any follow-on contract for the same effort if the contracting officer determines

that to do so would be in the best interest of the Government, provided that:

(i) The facilities are required to accomplish the purpose of the contract;

(ii) The contract contains a provision requiring the contractor to replace any of the facilities that reach the end of their useful life during the contract period, or which are beyond economical repair, if the facilities are still needed for contract performance. Such replacements shall be made with contractor-owned facilities. The contract provision shall also expressly prohibit contractor acquisitions of facility items for the Government, unless specifically authorized by the contract or consent has been obtained in writing from the contracting officer pursuant to FAR 45.302–1(a);

(iii) Consideration has been given to any alternative uses by Government personnel within the agency, in consultation with the center industrial property officer; and

(iv) The contracting officer documents the file with a detailed explanation of why continued furnishing of the facilities is in the best interest of the Government.

(a)(4)(A) The procurement officer is designated to make the determinations and findings (D&F) authorizing the use of Government facilities. See 1845.302–71 for D&F format.

(B) The requirements for a D&F and a prospective contractor's written statement asserting inability to obtain facilities are not applicable in the circumstances listed under FAR 45.302–1(d). In these cases, the contracting officer shall document the contract file with the rationale for providing the facilities, including the reason for not requiring the contractor to provide them.

1845.302–2 Facilities contracts.

Unless termination would be detrimental to the Government's interests, contracting officers shall terminate facilities contracts when the Government property is no longer required for the performance of Government contracts or subcontracts. Contracting officers shall not grant the contractor the unilateral right to extend the time during which it is entitled to use the property provided under the facilities contract.

1845.302–70 Securing approval of facilities projects.

(a) Pursuant to NMI 7330.1, Delegation of Authority—Approval Authorities for Facility Projects, the contracting officer must approve facilities projects involving leasing, construction, expansion, modification, rehabilitation, repair, or replacement of real property.

(b) The contracting officer's written authorization is required before any change is made in the scope or estimated cost of any facilities project.

1845.302–71 Determination and findings.

(a) Procedure. Determination and findings (D&F) required under FAR 45.302–1(a)(4) and 1845.302–1(a)(4) shall be prepared by the contracting officer and approved by the procurement officer. Prior to approval, concurrence must be obtained from the SEMO to ensure agreement on the use of the government facilities by the contractor. D&Fs shall address individual types of facilities to be provided to the contractor. Reference to specific variations in quantities of items to be provided should be included in the D&F if additional requirements are anticipated. A separate D&F is required before adding new types of items or significant changes in quantity or before adding any new work to the contract that requires additional Government facilities.

(b) Format. A sample format follows:

National Aeronautics and Space Administration, Washington, DC 20546

Determination and Findings

Decision To Provide Government Facilities

On the basis of the following findings and determinations, Government-owned facilities may be provided to [insert the name of the contractor] pursuant to the authority of FAR 45.302–1(a)(4).

FINDINGS

1. The [insert the name of the contracting activity] and the contractor (have entered)/(proposed to enter) into Contract No. [Insert the contract number]. (Include the following information: Type of contract, contract

value, and a brief description of the scope of work performed under the contract.)

2. (Justify that Government facilities are needed for performance under the contract. The justification shall demonstrate either (i) that the contract cannot be fulfilled by any other means, or (ii) that it is in the public interest to provide the facilities. It is imperative that the justification be fully substantiated by evidence.)

3. (If the contract effort cannot be fulfilled by any other means, indicate why the contractor cannot provide the facilities. For example, due to financial constraints, the contractor will replace the Government facilities with contractor-owned facilities. Address leadtime, validate the contractor's claims, and state that private financing was sought and either not available or not advantageous to the Government. If private financing was not advantageous to the Government, provide justification. Indicate other alternatives considered and reasons for rejection.)

4. (Describe the types of facilities to be provided and any variation in quantities of items based on functional requirements. Explain how these facilities pertain to the scope of work to be completed. State that the contract cannot be accomplished without the specified facility items being provided. Include an estimate of the value of the facilities and a statement that no facilities items under $10,000 unit cost will be provided unless the contractor is a nonprofit, on-site, or the facilities are only available from the Government.

5. (Indicate whether the property will be accountable under this contract or a separate facilities contract.)

Determination

For the reasons set forth above, it is hereby determined that the Government-owned facilities identified herein will be provided to the contractor.

Procurement Officer _____
Date _____

Subpart 1845.4—Contractor Use and Rental of Government Property

1845.402 Authorizing use of Government production and research property. (NASA supplements paragraph (a))

(a)(i) A NASA contracting officer desiring to authorize use of Government property under the cognizance of another contracting officer shall obtain that contracting officer's concurrence.

(ii) NASA contracting officers having cognizance over NASA property may authorize its use on contracts of other agencies if such use will not interfere with NASA's primary purpose for the property and will not extend beyond the expected expiration or completion date of the NASA contract.

1845.403 Rental—Use and Charges clause. (NASA supplements paragraph (a))

(a) The Center Director is designated as the authority to make the determinations on modified rental rates.

1845.405 Contracts with foreign governments or international organizations.

1845.405–70 NASA procedures.

(a) NASA policy is to recover a fair share of the cost of Government production and research property if such property is used in performing services or manufacturing articles for foreign countries or for international organizations.

(b) The prior written approval of the Associate Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign countries or for international organizations. The Logistics Management Office of the Headquarters Offices of Management Systems and Facilities (Code JLG), the Office of General Counsel (Code G), and the International Planning and Programs Branch of the Headquarters Office of External Relations (Code IRD) are required concurrences.

(c) Contracting officers shall forward requests for approval to Code HS, along with a summary of the circumstances involved, including as a minimum—

(1) The name of the requesting contractor;

(2) The number of the contract under which the equipment is controlled;

(3) A description of the equipment;

(4) The name of the foreign contractor and the relationship of the foreign contractor to its government or to any international organization;

(5) A description of the articles to be manufactured or services to be performed;

(6) A statement that the intended use will not interfere with the current or foreseeable requirements of the United States or require use of the equipment

beyond the expected expiration or completion date of the NASA contract;

(7) A statement that the use of Government property is consistent with the best interests of the United States;

(8) A statement that such use is legally authorized; and

(9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States.

(d) Use, if approved, shall be subject to rent in accordance with FAR 45.403.

1845.407 Use of Government production and research property on independent research and development programs.

1845.406–70 NASA policy.

The contracting officer should not authorize contractor use of Government property for independent research and development on a rent-free basis except in unusual circumstances when it has been determined by the contracting officer that—

(a) Such use is clearly in the best interests of the Government (for example, the project can reasonably be expected to be of value in specific Government programs); and

(b) No competitive advantage will accrue to the contractor through such use (see FAR 45.201).

1845.406 Non-Government use of plant equipment. (NASA supplements paragraph (a)).

For NASA, the coverage in FAR 45.407, applies to all equipment, not just plant equipment.

(a)(i) The Associate Administrator for Procurement (Code HS) is the approval authority for non-Government use of equipment exceeding 25 percent.

(ii) The percentage of Government and non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule, as represented by scheduled production shift hours, shall be used. All equipment having a unit acquisition cost of less than $25,000 at any single location may be averaged over a quarterly period. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis.

(iii) Approval for non-Government use of less than 25 percent shall be for a period not exceeding 1 year. Approval for non-Government use in excess of 25 percent shall not be for less than 3 months.

(iv) Requests for the approval shall be submitted to Code HS at least 6 weeks in advance of the projected use and shall include—

(A) The number of equipment items involved and their total acquisition cost; and

(B) An itemized listing of equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, year of manufacture, and acquisition cost.

Subpart 1845.5—Management of Government Property in the Possession of Contractors

1845.502 Contractor responsibility.

1845.502–1 Receipts for Government property.

Receipts for Government property shall comply with the instructions for preparing NASA Form 1018, NASA Property in the Custody of Contractors (see 1845.7101).

1845.502–70 Contractor-acquired property.

All contractor-acquired property must be authorized by the contract and is subject to a determination by the contracting officer that it is allocable to the contract and reasonably necessary. The acquisition (and fabrication) of Government property is further subject to the following conditions, depending on category of property:

(a) Facilities.

(1) Prior contracting officer approval, if the facilities are not already specifically described in the contract as contractor-acquired.

(2) Submission of DD Form 1419, DOD Industrial Plant Requisition, or equivalent format, and return of Certificate of Nonavailability.

(3) Submission of the written statement prescribed by FAR 45.302–1(a)(4).

(b) Special test equipment.

(1) Contracting officer approval 30 days in advance if the equipment is not

identified in the solicitation or contract.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

(c) Special tooling.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) If the contract is a fixed-price contract, submission of the list to the contracting officer within 60 days after delivery of the first production end items (or later as prescribed by the contracting officer), unless the tooling is already identified in the solicitation.

(3) Submission of DD Form 1419 or equivalent format and return of Certificate of Nonavailability.

(d) Material. If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting office consent if required by that clause.

(e) Agency-peculiar property.

(1) If the contract contains a Subcontracts clause, advance notification to the contracting officer and contracting officer consent if required by that clause.

(2) Submission of DD Form 1419, or equivalent format, and return of Certificate of Nonavailability.

1845.505 Records and reports of Government property.

1845.505–14 Reports of Government property. (NASA supplements paragraphs (b))

(b) When the clause at 1852.245–73, Financial Reporting of NASA Property in the Custody of Contractors, is included in the contract, the contractor shall submit NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form and 1845.71. Contractor property control systems shall distinguish between Government furnished and contractor acquired property for purposes of reporting the acquisition cost in the property classifications shown in FAR 45.505–14(a) (1) through (5).

1845.508 Physical inventories.

NASA contractors shall reconcile inventories with the official property records and submit reports to the property administrator within 30 days after inventory completion. The contractor shall investigate all losses of property and discoveries of unrecorded property to determine the causes of the discrepancy and actions needed to prevent its recurrence.

Subpart 1845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1845.604 Restrictions on purchase or retention of contractor inventory.

(1) No contractor may sell contractor inventory to persons known by it to be NASA or DOD personnel who have been engaged in administering or terminating NASA contracts.

(2)(i) The contractor's or subcontractor's authority to approve the sale, purchase, or retention of Government property on a contract which is excess to needs after Government reutilization screening at less than cost by a subcontractor, and the subcontractor's authority to sell, purchase, or retain such property at less than cost with the approval of the contractor or next higher-tier subcontractor does not include authority to approve—

(A) A sale by a subcontractor to the contractor, the next higher-tier subcontractor, or their affiliates; or

(B) A sale, purchase, or retention by a subcontractor affiliated with the contractor or next higher-tier subcontractor.

(ii) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

1845.606 Inventory schedules.

1845.606–1 Submission.

See 1845.608 for intra-agency screening of excess contractor-held property.

1845.607 Scrap.

1845.607–1 General.

1845.607–170 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in

accordance with that procedure and not processed under this section.

(b) The center property administrator is authorized to approve the contractor's scrap procedure. Before approval, the plant clearance officer shall review the procedure, particularly regarding sales. The plant clearance officer shall ensure that the procedure contains adequate requirements for inspecting and examining items to be disposed of as scrap. When the contractor's procedure does not require physical segregation of Government-owned scrap from contractor-owned scrap and separate disposal, care shall be exercised to ensure that a contract change that generates a large quantity of property does not result in an inequitable return to the Government. In such a case, the property administrator shall make a determination as to whether separate disposition of Government scrap would be appropriate.

(c) A plant clearance case shall not be established for property disposed of through the contractor's approved scrap procedure.

(d) Property in scrap condition, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and 1845.

1845.607–2 Recovering precious metals. (NASA supplements paragraph (b)).

(b) Silver, gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium; scrap bearing such metals; and items containing recoverable quantities of them shall be reported to the Defense Reutilization and Marketing Service, DRMS–R, Federal Center, Battle Creek, MI 49017–3092, for instructions regarding disposition.

1845.608 Screening of contractor inventory.

1845.608–1 General. (NASA supplements paragraphs (a))

(a) Property Disposal Officers (PDOs) are the center focal points for intra-agency reutilization screening. PDOs shall acknowledge receipt of inventory schedules within 30 days and simultaneously provide the plant clearance officer a NASA screening completion/release date. Screening shall be accomplished in accordance with NHB 4300.1.

1845.608–6 Waiver of screening requirements.

The Director of the Logistics Management Office of the Headquarters Office of Management Systems and Facilities (Code JLG) is designated to authorize exceptions to intra-agency screening requirements.

1845.610 Sale of surplus contractor inventory.

1845.610–3 Proceeds of sale.

The plant clearance officer shall maintain an open suspense record until verifying that credit has been applied, unless another Government representative has specifically assumed this responsibility.

1845.610–4 Contractor inventory in foreign countries.

NASA procedures for disposal are in NHB 4300.1.

1845.613 Property disposal determinations.

The center property disposal officer (PDO) shall review the determinations in accordance with NHB 4300.1.

1845.615 Accounting for contractor inventory.

A copy of Standard Form 1424, Inventory Disposal Report, shall be provided to the center industrial property officer or the PDO.

Subpart 1845.70—[Reserved]

Subpart 1845.71—Forms Preparation

1845.7101 Instructions for preparing NASA Form 1018.

NASA Form 1018 (see 1853.3) provides information for NASA financial statements and property management. Accuracy and timeliness of the report are, therefore, very important. Contractors shall retain documents which support the data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported,

and reporting requirements are set forth in this subpart.

1845.7101–1 Property classification.

(a) Contractors shall report costs in the classifications required on NF 1018, as described in this section. For Land, Buildings, Other Structures and Facilities, and Leasehold Improvements, contractors shall report the amount for all items with a unit cost of $5,000 or more and a useful life of 2 years or more. For Plant Equipment, Special Tooling, Special Test Equipment and Agency-Peculiar Property, contractors shall separately report:

(1) the amount for all items with a unit cost of $5,000 or more and a useful life of 2 years or more, and

(2) all items under $5,000, regardless of useful life.

(b) Contractors shall report the amount for all Materials, regardless of unit costs.

(c) *Land.* Includes costs of land, improvements to land, and associated costs incidental to acquiring and preparing land for use. (for example; appraisal fees, clearing costs, drainage, grading, landscaping, plats and surveys, removal and relocation of the property of others as part of a land purchase, removal or destruction of structures or facilities purchased but not used, and legal expenses).

(d) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Examples of fixed equipment required for the functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(e) *Other structures and facilities.* Includes costs of acquisitions and improvements of structures and facilities other than buildings; for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements, such as sidewalks, parking areas, and fences.

(f) *Leasehold improvements.* Includes costs of improvements to leased buildings, structures, and facilities, as well as easements and right-of-way, where NASA is the lessee or the cost is charged to a NASA contract.

(g) *Equipment.* Includes cost of commercially available personal property for use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, accessory or auxiliary items, and test equipment).

(h) *Construction in Progress.* Includes costs for work in process for the construction of Buildings, Other Structures and Facilities, and Leasehold Improvements to which NASA has title.

(i) *Special Tooling.* Includes costs of equipment and manufacturing aids (and components and replacements of these items) that are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts, or to the performance of particular services. Examples include jigs, dies, fixtures, molds, patterns, taps and gauges.

(j) *Special Test Equipment.* Includes costs of equipment used to accomplish special purpose testing in performing a contract, and items or assemblies of equipment.

(k) *Material.* Includes costs of NASA owned property held in inventory that may become a part of an end item or be expended in performing a contract. Examples include raw and processed material, parts, assemblies, small tools and supplies. Does not include material that is part of work in process.

(l) *Agency-Peculiar Property.* Includes actual or estimated costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include aircraft, engines, satellites, instruments, rockets, prototypes and mock-ups. The amount of property, title to which vests in the Government as a result of progress

payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property.

(m) *Contract Work-in-Process.* Includes the costs of all work-in-process and excludes the costs of completed items reported in other categories.

1845.7101–2 Transfers of property.

A transfer is a change in accountability between and among prime contracts, centers, and other Government agencies (e.g., between contracts of the same installation, contracts of different installation, a contract of one installation to that of another installation, an installation to a contract of another installation, and a contract to another Government agency or its contract). So that NASA may properly control and account for transfers, they shall be adequately documented. Therefore, procurement, property, and financial organizations at NASA Centers must effect all transfers of accountability, although physical shipment and receipt of property may be made directly by contractors. The procedures described in this section shall be followed in all cases, to provide an administrative and audit trail, even if property is physically shipped directly from one contractor to another. Property shipped between September 1 and September 30, inclusively, shall be reported by the shipping contractor, regardless of the method of shipment, unless written evidence of receipt at destination has been received. Repairables provided under fixed price repair contracts that include the clause at 1852.245–72, Liability for Government Property Furnished for Repair or Other Services, remain accountable to the cognizant center and are not reportable on NF 1018; repairables provided under a cost-reimbursement contract, however, are accountable to the contractor and reportable on NF 1018. All materials provided or conduct repairs are reportable, regardless of contract type.

(a) *Approval and Notification.* The contractor must obtain the approval of the contracting officer or designee for transfers of property before shipment. Each shipping document must contain contract numbers, shipping references, property classifications in which the items are recorded, unit prices, and any other appropriate identifying or descriptive data. Unit prices shall be obtained from records maintained pursuant to FAR part 45 and 1845. Shipping contractors shall furnish a copy of the shipping document to the cognizant property administrator. Shipping and receiving contractors shall promptly notify the financial management office of the NASA center responsible for their respective contracts when accountability for Government property is transferred to, or received from, other contracts, contractors, NASA centers or Government agencies. Copies of shipping or receiving documents will suffice as notification in most instances.

(b) *Reclassification.* If property is transferred to another contract or contractor, the receiving contractor shall record the property in the same property classification and amount appearing on the shipping document. For example, when a contractor receives an item from another contractor that is identified on the shipping document as equipment, but that the recipient intendes to incorporate into special test equipment, the recipient shall first record the item in the equipment account and subsequently reclassify it as special test equipment. Reclassification of equipment, special tooling, special test equipment, or agency-peculiar property requires prior approval of the contracting officer or a designee.

(c) *Incomplete documentation.* If contractors receive transfer documents having insufficient detail to properly record the transfer (e.g., omission of property classification, unit prices, etc.) they shall request the omitted data directly from the shipping contractor or through the property administrator as provided in FAR 45.505–2.

1845.7101–3 Computing costs of fabricated special tooling, special test equipment, agency-peculiar property and contract work in process

(a) Costs of fabricated special tooling, special test equipment, agency-peculiar property and contract work in process shall be computed in accordance with accepted accounting principles, be reasonably accurate, and be

the product of any one or a combination of, the following:

(1) Abstracts of cost data from contractor property or financial records.

(2) Computations based on engineering and financial data.

(3) Estimates based on NASA Form 533 reports.

(4) Formula procedures (e.g., using a 50 percent factor for work in process items, on the basis of updated Standard Form 1411 estimates or the contractor's approved estimating and pricing system).

(5) Other approved methods.

(b) Contractors shall report costs using records that are part of the prescribed property or financial control system as provided in this section. Fabrication costs shall be based on approved systems or procedures and shall include all direct and indirect costs of fabricating Government property.

(c) The contractor shall redetermine the costs of items returned for modification or rehabilitation.

(d) The computation of work in process shall include the costs of associated systems, subsystems, and spare parts and components furnished or acquired and charged to work in process pending incorporation into a finished item. These types of items make up what is sometimes called production inventory and include programmed extra units to cover replacement during the fabrication process (production spares). Also included are deliverable items on which the contractor or a subcontractor has begun work, and materials that have been issued from inventory.

1845.7101–4 Type of deletions from contractor property records.

Contractors shall report the types of deletions from contract property records as described in this section.

(a) *Adjusted.* Changes in the deletion amounts, if any, that result from mathematical errors in the previous report.

(b) *Lost, Damaged or Destroyed.* Deletion amounts as a result of relief from responsibility under FAR 45.503 granted during the reporting period.

(c) *Transferred in Place.* Deletion amounts that result from a transfer of property to a follow-up contract with same contractor.

(d) *Transferred to Center Accountability.* Deletion amounts that result from transfer of accountability to the center responsible for the contract, whether or not the items are physically moved.

(e) *Transferred to Another NASA Center.* Deletion amounts caused by transfer of accountability to a center other than the one responsible for the contract, whether or not the items are physically moved.

(f) *Transferred to Another Government Agency.* Deletion amounts that result from transfer of property to another Government agency.

(g) *Purchased at Cost/Returned for Credit.* Deletion amounts due to contractor purchase or retention of contractor acquired property as provided in FAR 45.605–1; or to contractor returns to suppliers under FAR 45.605–2.

(h) *Disposal Through Plant Clearance Process.* Deletions other than transfers; e.g., donations to eligible recipients, sold at less than cost, or abandoned/directed destruction.

1845.7101–5 Contractor's privileged financial and business information.

If a transfer of property between contractors will involve disclosing costs of a proprietary nature, the contractor shall furnish unit prices only on those copies of the shipping documents that are sent to the shipping and receiving NASA installations. Transfer of the property to the receiving contractor shall be on a no-cost basis.

1845.7102 Instructions for preparing DD Form 1419.

(a) The contractor shall enter the essential information covering Sections I and II before submission of DD Form 1419, DOD Industrial Plant Equipment Requisition, to the Industrial Property Officer (IPO). The IPO shall review each submission for completeness and authenticity. Incomplete or invalid requests shall be returned for correction.

(b) When a suitable item is allocated in Section IV, inspection of the equipment is recommended. Notification of acceptance or rejection of the item offered must reach NASA within 30 days after allocation. A copy of the DD Form 1419, or equivalent format, will serve as the clearance document to inspect the equipment at the storage

site. Note acceptance or rejection of the item, without inspection or after inspection in Section VI. If the item is acceptable, execute Section VII. Cite the NASA appropriation symbol where applicable in Section VII.

(c) The IPO shall assign a requisition number to each DD Form 1419, or equivalent format request.

(d) Next will be a four-digit entry comprised of the last digit of the current calendar year and the Julian date of the year. For example, April 15, 1997, would be written as 7095 (April 15 being the 95th day of the year). The last entry will be a four-digit number from 0001 to 9999 to sequentially number requisition forms prepared on the same date. For example, the ninth requisition prepared on April 15, 1997, would be 7095–0009, preceded by the FEDSTRIP/MILSTRIP Activity Address Code. When submitting subsequent DD Forms 1419, or equivalent format, related to the item requested, the IPO shall use the same requisition number and add the alpha code to the end of the requisition number to indicate a second or third action on the basic request. Alpha ''A'' would indicate a second request, ''B'' a third, etc. In this manner, all actions, correspondence, etc., relative to a given request can be identified at all levels of processing by the use of the requisition number.

(e) Detailed directions for completing the DD Form 1419 follow. The contractor may elect to provide the required data in an equivalent format, which complies with these directions.

Section I

Item Description. To ensure adequate screening, the item description must be complete. For single-purpose equipment or general-purpose equipment with special features, requests must contain detailed descriptive data as to size and capacities, setting forth special operating features or particular operations required to be performed by the item.

Block 1. Not applicable.

Block 2. Enter the manufacturer's name and Federal Supply Code for manufacturer (Cataloging Handbook H4–1) of the item requested.

Block 3. Enter the manufacturer's model style, or catalog number assigned to the equipment being requisitioned. Always use the model number, if available. The style number is the next preference. Enter ''None'' in this block if the model, style or catalog number is not known.

Block 4. Enter the first four digits of the National Stock Number, if known.

Block 5. Not applicable.

Block 6. Self-explanatory.

Block 7. Place an ''X'' in the applicable block to indicate whether you desire to physically inspect the item before acceptance.

Block 8. Self-explanatory.

Block 9. Enter the complete description of the item. Continue the description in Block 53 if additional space is needed.

Section II

Block 10. Enter the contractor's name, street address, city, state, and zip code from which the requisition is being initiated. The address should be the one to which inquiries of a technical nature will be referred. Specify the telephone number of an individual who will respond to inquiries concerning the request.

Block 11. Enter the contract number or document number authorizing acquisition of the items shown in Section I. This normally will be a facility contract number. Otherwise, it should be a purchase order or procurement request number.

Block 12. Self-explanatory.

Block 13. Not applicable.

Block 14. Disregard the ''Military'' block. Show the NASA contract number and program for which the item is to be used.

Block 15. Enter the specific function to be performed by the equipment. When applicable, enter the tolerances, capacities, specifications, etc., that the equipment must satisfy.

Block 16. Determine the date the item must be installed to meet production requirements. From this date deduct the estimated number of days required for installation. Enter the adjusted date in this block.

Block 17. Enter the date by which NASA must issue a Certificate of Nonavailability. Determine the date by

subtracting the acquisition lead time and 30 days administrative lead time from the date shown in Block 16.

Block 18. Enter the Defense Priority and Allocations System (DPAS) rating assigned to the contract or anticipated purchase order, if applicable.

Block 19. Place an ''X'' in the appropriate box. If for replacement, identify the item being replaced and the reason for replacement.

Block 20. Place an ''X'' in the appropriate box. Show the appropriate symbol if the answer is ''yes.''

Block 21. Not applicable.

Blocks 22 and 23. In addition to the official's title and signature, type the signing official's name, office symbol or name, and telephone number plus extension. The company representative who prepares and submits the requirement to the cognizant NASA certifying office should sign.

Block 24. Self-explanatory.

Block 25a. Not applicable.

Block 25b. Enter the name and address of the installation certifying the requirement.

Block 25c. This block is for signature of the property administrator or contracting officer at plant level.

Block 25d. Self-explanatory.

Block 25e. This block is for the signature of NASA installation official certifying the requirement.

Block 25f. Self-explanatory.

Section III

Blocks 26–29. Self-explanatory.

Section IV

N/A

Section V

Complete this section if equipment is unavailable.

Section VI

Blocks 44–47. The requesting official signing Section II, Block 23, shall complete Section VI and shall list reasons for non-acceptance in Section VIII, Remarks, or on a separate document attached to the DD Form 1419.

Section VII

Block 48. Enter the complete name, street address, city, state, and zip code of the contractor or installation to which the item is to be shipped. Indicate railhead and truck delivery points when other than the address named.

Blocks 49 and 50. Self-explanatory.

Blocks 51 a. and b. Ensure that NASA appropriation symbols are included with the work order number.

Block 51c. Enter the NASA appropriation symbol chargeable for any special work ordered (e.g., rebuild, repair, or accessory replacement).

Block 51d. Enter the NASA installation and office symbol for the organization that will make payment for transportation and packing, crating, and handling.

Block 52. Self-explanatory.

Section VIII

Block 53. This block can be used to expand or explain entries made in Blocks 1 through 52. When requisitioning equipment from excess listings, identify the issuing office, list number, date, control number, and item number assigned to the equipment. When requesting equipment from DOD inventories, refer to DOD instructions.

Subpart 1845.72—Contract Property Management

1845.7201 Definitions.

Supporting responsibility, as used in this subpart, relates to the assignment of a subcontract, or a portion of a prime contract being performed at a secondary location of the prime contractor, to a property administrator other than the individual assigned to the prime location.

Property control system, as used in this subpart, identifies a contractor's internal management program encompassing the protection of, preservation of, accounting for, and control of property from its acquisition through disposition.

1845.7202 General.

This subpart describes major elements of the NASA Contract Property Management Program. It provides guidance to NASA installation personnel responsible for NASA contract property (NASA personal property in

the possession of contractors). It applies to all NASA installation personnel charged with this responsibility, including industrial property officers and specialists, property administrators, and plant clearance officers. It also provides detailed procedures for property administration. The NASA Contract Property Management Program includes the following three major elements:

(a) Performance of property administration and plant clearance by DOD under delegations from NASA, pursuant to 1842.101.

(b) Performance of property administration and plant clearance by NASA under certain situations, pursuant to 1842.203.

(c) Maintenance of property administration and plant clearance functional oversight, regardless of delegations.

1845.7203 Delegations of property administration and plant clearance.

When delegated to DOD, property administration and plant clearance are performed in accordance with DOD's regulations and procedures, as amended by the NASA Letter of Contract Administration Delegation, Special Instructions on Property Administration and Plant Clearance. These Special Instructions are developed by the Headquarters Office of Management Systems and Facilities Logistics Management Office (Code JLG), and are available from that office upon request. The contracting officer shall issue the Special Instructions with delegations whenever Government property will be involved. Additional or more tailored property instructions are not proscribed but must be coordinated with Code JLG before issuance.

1845.7204 Retention of property administration and plant clearance.

NASA may occasionally retain the property administration and plant clearance function, such as for contract work performed at the installation awarding the contract and not subject to the clause at 1852.245–71, Installation-Accountable Government Property. In these cases, property administration shall be performed in accordance with 1845.3 through 1845.6, and plant clearance shall be performed in accordance with FAR Subpart 45.6 and 1845.6. Under the clause at 1852.245–71, property administration and plant clearance are neither delegated nor retained; they are simply not required because the property is treated as installation rather than contract property.

1845.7205 Functional oversight of property administration and plant clearance.

NASA contracting officers retain functional management responsibility for their contracts. Utilization of the contract administration services of another Government agency in no way relieves NASA contracting officers of their ultimate responsibility for the proper and effective management of contracts. The functional management responsibility for contract property is described in this section. Beyond individual contracting officers, each NASA installation has designated an industrial property officer to manage and coordinate property matters among the various contracting officers, technical officials, contractor officials, and delegated property administrators and plant clearance officers. Generally, that individual is responsible for the entire contract property management function outlined below; the installation is responsible for the entire function regardless of how it is organized and distributed. The responsibilities are:

(a) Provide a focal point for all management of contract property, including Government property (Government-furnished and contractor-acquired) provided to universities as well as to industry.

(b) Provide guidance to contracting and other personnel on the NASA property provisions.

(c) To the extent feasible, review property provisions of acquisition plans, solicitations, contracts, and modifications for potential problems. Propose changes as necessary.

(d) To the extent feasible, participate in pre-award surveys/post-award orientations when significant amounts of Government property will be involved.

(e) Ensure that vesting-of-title determinations are made and documented pursuant to FAR 35.014(b).

(f) Maintain effective communications with delegated property administrators and plant clearance officers to keep fully informed about contractor performance and progress on any property control problems.

(1) Obtain and review property control system survey summaries for all contracts for which property administration has been delegated. Advise Code JLG of any severe or continuing problems.

(2) Provide property administrators copies of all pertinent contract property documentation.

(g) Review and analyze NASA Form 1018, NASA Property in the Custody of Contractors.

(h) Negotiate, or ensure the negotiation of, facilities contracts when required by FAR 45.302 and 1845.302. Advise Code JLG annually of new and completed facilities contracts.

(i) Review property administrators' approvals of relief of responsibility for lost, damaged, and destroyed property and question any excessive or repetitive approvals.

(j) When appropriate, make recommendations to source and performance evaluation boards regarding property management and award fee criteria and evaluations regarding property management.

(k) Monitor plant clearance status to preclude delays in contract closeout.

(l) Maintain contract property files for all transactions and correspondence associated with each contract. Upon receipt of Standard Form 1424, Inventory Disposal Report, and DD Form 1593, Contract Administration Completion Record, or equivalents, merge all property records for the contract and forward for inclusion with the official completed file.

(m) Perform on-site property administration and plant clearance when they are not delegated to DOD and the property is not subject to the clause at 1852.245–71.

1845.7206 Responsibilities of property administrators and plant clearance officers.

1845.7206–1 Property administrators.

(a) When property administration is not delegated to DOD, the property administrator shall evaluate the contractor's management and control of Government property and ascertain whether the contractor is effectively complying with the contract provisions. The property administrator's responsibilities include—

(1) Developing and applying a system survey program for each contractor under the property administrator's cognizance;

(2) Evaluating the contractor's property control system and approving or recommending disapproval;

(3) Advising the contracting officer of any (i) contractor noncompliance with approved procedures and (ii) other significant problems the property administrator cannot resolve, and recommending appropriate action, which may include disapproval of the contractor's property control system;

(4) Resolving property administration matters as necessary with the contractor's management, personnel from Government procurement and logistics activities, and representatives of the NASA Headquarters Office of the Inspector General, the Defense Contract Audit Agency (DCAA), and other Government agencies; and

(5) Recognizing the functions of other Government personnel having cognizance of Government property and obtaining their assistance when required. (These functions include, but are not limited to, contract audit, quality assurance, engineering, pricing, and other technical areas. Assistance and advice on matters involving analyses of the contractor's books and accounting records and on any other audit matters deemed appropriate shall be obtained from the cognizant auditor.)

(b) The participation of property administrators (or other Government industrial property personnel) in preaward surveys/post-award orientations is required whenever significant amounts of Government property will be involved, in order to reveal and resolve property management problems early in the acquisition cycle.

1845.7206–2 Plant clearance officers.

When plant clearance is not delegated to DOD, NASA plant clearance officers shall be responsible for—

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for property disposal;

(h) Determining the method of disposal;

(i) Surveillance of any contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, the Supply and Equipment Management Officer (SEMO) and other Federal agencies in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving the method of sale, evaluating bids, and approving sale prices for any contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses related to any contractor-conducted sales;

(n) Securing antitrust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

1845.7207 Declaration of excess property.

A problem often disclosed by system analysis is the failure of a contractor to report Government property not needed in performance of the contract (excess). The property administrator shall fully document and report any such finding to the administrative contracting officer. After a report of excess received from a contractor has been referred to the plant clearance officer for screening and ultimate disposition, the property administrator shall ensure prompt disposition. For centrally reportable plant equipment, the property administrator shall—

(a) Assure the preparation and submission of individual reports required of the contractor;

(b) Verify the permit certifications required by the forms; and

(c) Transmit the report to the NASA Industrial Property Officer.

1845.7208 Closure of contracts.

1845.7208–1 Completion or termination.

Upon completion or termination of a contract, the property administrator shall—

(a) Monitor the actions of the contractor in returning excess Government property not referred to the plant clearance officer; and

(b) Advise the cognizant plant clearance officer as to the existence at a contractor's plant of residual property requiring disposal.

1845.7208–2 Final review and closing of contracts.

(a) When informed that disposition of Government property under a contract has been completed, the property administrator shall perform a final review and sign a determination that—

(1) Disposition of Government property has been properly accomplished and documented;

(2) Adjustment documents, including any request of the contractor for relief from responsibility, have been processed to completion;

(3) Proceeds from disposals or other property transactions, including adjustments, have been properly credited to the contract or paid to the Government as directed by the contracting officer;

(4) All questions regarding title to property fabricated or acquired under the contract have been resolved and appropriately documented; and

(5) The contract property control record file is complete and ready for retirement.

(b) When final review pursuant to paragraph (a) of this section reveals that such action is proper, the property administrator shall accomplish and sign a DD Form 1593, Contract Administration Completion Record, or equivalent.

(c) The executed DD Form 1593 shall be forwarded to the contracting officer,

the Property Summary Data Record shall be so annotated, and the contracting officer shall include it in the contract file.

1845.7209 Special subjects.

1845.7209–1 Government property at alternate locations of the prime contractor and subcontractor plants.

(a) Government property provided to a prime contractor may be located at other plants of the prime contractor or at subcontractor locations. The prime contractor is accountable and responsible to the Government for this property.

(b) A Government property administrator cognizant of the location of the property shall normally be designated to (1) perform required surveys of the property control system and (2) exercise surveillance over the property as a supporting responsibility.

(c) If the property administrator determines that supporting property administration is required, he or she shall write the cognizant contract administration office asking that a property administrator be assigned. The request for supporting property administration shall include—

(1) The name and address of the prime contractor;

(2) The prime contract number;

(3) The name and address of the alternate location of the prime contractor, or of the subcontractor where the property will be located;

(4) A listing of the property being furnished, or, if property is being acquired locally, a statement to this effect; and

(5) A copy of the subcontract or other document under which the property will be furnished or acquired.

(d) Concurrent with the action cited in paragraph (c) of this section, the property administrator shall ascertain whether the prime contractor will perform the necessary reviews and surveillance with the contractor's own personnel, or elect to rely upon the system approval and continuing surveillance by a supporting property administrator of the property control system at the alternate location or subcontractor plant. If the prime contractor advises that it will accept the findings of a supporting property administrator, a statement in writing to that effect shall be obtained. If the prime contractor does not so elect, it will be required to perform the requisite reviews and surveillance and document its actions and findings.

(e) If a single item or limited quantities of property will be located at an alternate location or subcontractor plant, the property administrator may determine that supporting property administration is unnecessary, provided—

(1) The prime contractor's records adequately reflect the location and use of the property;

(2) The nature of the property is such that the possibility of its use for unauthorized purposes is unlikely; and

(3) The nature of the property is such that a program of preventive maintenance is not required.

(f) When supporting property administration will not be requested, the services of a property administrator in the contract administration office cognizant of the site where the property is located may be requested on an occasional basis of special reviews or such other support as may be necessary. Repeated requests for assistance indicate a requirement for requesting supporting property administration.

1845.7209–2 Loss, damage, or destruction of Government property.

(a) Normally, contract provisions provide for assumption of risk of loss, damage, or destruction of Government property as described by the following:

(1) Sealed-bid and certain negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract (see the clause at FAR 52.245–2, Government Property (Fixed-Price Contracts)).

(2) Other negotiated fixed-price contracts provide that the contractor assumes the risk for all Government property provided under the contract, with the exceptions set forth in the clause at FAR 52.245–2, Alternate I and Alternate II.

(3) Cost-reimbursement contracts (see the clause at FAR 52.245–5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour

Contracts)) provide that the Government assumes the risk for all Government property provided under the contract when there is no willful misconduct or lack of good faith of any of the contractor's managerial personnel as defined in the contract.

(4) There are certain events for which the Government does not assume the risk of loss, damage, or destruction of Government property, such as risks the contract expressly requires the contractor to insure against. Therefore, before reaching a conclusion or making a determination, the contracting officer shall obtain property administrator review of the contract clause and shall obtain advice from appropriate legal counsel on questions of legal meaning or intent.

(5) ''Willful misconduct'' may involve any intentional or deliberate act or failure to act causing, or resulting in, loss, damage, or destruction of Government property.

(6) ''Lack of good faith'' may involve gross neglect or disregard of the terms of the contract or of appropriate directions of the contracting officer or the contracting officer's authorized representatives. Examples of lack of good faith may be demonstrated by the failure of the contractor's managerial personnel to establish and maintain proper training and supervision of employees and proper application of controls in compliance with instructions issued by authorized Government personnel.

(b) If part of the contractor's system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, or destruction of Government property. The property administrator shall give special attention to reasonably ensuring that any loss, damage, or destruction occurring during a period when a contractor's system is not approved is identified before approval or reinstatement of approval.

1845.7209–3 Loss, damage, or destruction of Government property while in contractor's possession or control.

(a) The property administrator shall require the contractor to report any loss, damage, or destruction of Government property in its possession or control (including property in the possession or control of subcontractors) as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of Government property considered unreasonable by the property administrator or loss, damage, or destruction of Government property not reported by the contractor, the property administrator shall prepare a statement of the items and amount involved. This statement shall be furnished to the contractor for investigation and submission of a written report to the property administrator relative to the incidents reported.

(c) The contractor's reports referenced in paragraphs (a) and (b) of this section shall contain factual data as to the circumstances surrounding the loss, damage, destruction, or excessive consumption, including—

(1) The contractor's name and the contract number;

(2) A description of items lost, damaged, destroyed, or unreasonably consumed;

(3) The cost of property lost, damaged, destroyed, or unreasonably consumed and cost of repairs in instances of damage (in event actual cost is not known, use a reasonable estimate);

(4) The date, time (if pertinent), and cause or origin of the loss, damage, destruction, or consumption;

(5) Known interests in any commingled property of which the Government property lost, damaged, destroyed, or unreasonably consumed is (or was) a part;

(6) Insurance, if any, covering the Government property or any part or interest in any commingled property;

(7) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption and to prevent repetition of similar incidents; and

(8) Other facts or circumstances relevant to determining liability and responsibility for repair or replacement.

(d) The property administrator shall investigate the incident to the degree required to reach a valid and supportable conclusion as to the contractor's

liability for the loss, damage, destruction, or unreasonable consumption under the terms of the contract, and the course of action required to conclude the adjustment action. When required, the assistance of the quality assurance representative, industrial specialist, insurance officer, legal counsel, or other technician will be secured. When the contractor acknowledges liability, the property administrator shall forward a copy of the credit memorandum or other adjusting document to the administrative contracting officer and auditor, if appropriate, to assure proper credit. If analysis of contract provisions and circumstances establishes that the loss, damage, destruction, or consumption constitutes a risk assumed by the Government, the property administrator shall so advise the contractor in writing, thereby relieving the contractor of responsibility for the property. A copy of the documentation and notification to the contractor shall be retained in the Contract Property Control Data File for the contract.

(e)(1) If the property administrator concludes that the contractor is liable for the loss, damage, destruction, or unreasonable consumption of Government property, he or she shall forward the complete file with conclusions and recommendations to the contracting officer for review and determination. The file shall contain—

(i) A statement of facts as supported by investigation;

(ii) Recommendations as to the contractor's liability and its amount;

(iii) Recommendations as to action to be taken with regard to third party liability, if appropriate;

(iv) Requirements for disposition, repair, or replacement of damaged property; and

(v) Other pertinent comments.

(2) A copy of the contracting officer's determination shall be furnished to the contractor and the property administrator, and a copy shall be retained in the contracting officer's files. The property administrator's copy shall be filed in the Contract Property Control Data File for the contract when all pertinent actions, such as compensation to the Government or repair or replacement of the property, have been completed.

1845.7209–4 Financial reports.

The property administrator is responsible for obtaining financial reports as prescribed in 1845.505–14 for all assigned contracts. Reports shall be accumulated, reviewed and distributed as required. Contractors are required to submit separate reports on each contract that contains the property reporting clause (see 1852.245–73) except as noted in 1845.7101–4(c).

1845.7210 Contractor utilization of Government property.

1845.7210–1 Utilization surveys.

(a) The property administrator is responsible for ensuring that the contractor has effective procedures for evaluating Government property utilization. However, when necessary, the contract administration office shall provide specialists qualified to perform the technical portion of utilization surveys to assist the property administrator in determining the adequacy of these procedures.

(b) Upon assignment of an initial contract under which Government-owned plant equipment in particular will be provided to a contractor, the property administrator shall ensure that the contractor has established effective procedures and techniques for controlling its utilization. The property administrator, with the assistance of technical specialists, if necessary, shall evaluate these procedures. A record of the evaluation shall be prepared and become a part of the property administration file. If the procedures are determined inadequate, the record shall identify the deficiencies and the corrective actions necessary. If the deficiencies are not corrected by the contractor, the property administrator shall promptly refer the matter to the contracting officer.

(c) The property administrator shall perform annual surveys of the contractor's procedures related to utilization of Government-owned plant equipment. At contractor facilities having a substantial quantity of plant equipment, the surveys should normally be conducted on a continual basis, reviewing

equipment utilization records and physically observing a group of preselected items during each portion of the survey. Surveys shall be conducted to the degree determined necessary, considering the findings of prior surveys and the contractor's performance history in identifying and declaring equipment excess to authorized requirements. The contractor shall be required to justify, by specific Government programs, the retention of all Government-owned plant equipment. The property administrator shall make maximum use of contractor's machine loading data, order boards, production planning records, machine time records, and other production control methods.

(d) The property administrator shall conduct a special survey when a significant change occurs in the contractor's production schedules, such as a termination, completion of a contract, or a major adjustment in a program. Special surveys may be limited to a given department, activity, or division of a contractor's operation.

(e) In the absence of adequate justification for retention, the contractor shall identify and report Government-owned plant equipment in accordance with FAR 45.502(g) and 45.509–2(b)(4). Items that are part of approved inactive package plants or standby lines are exempted from utilization surveys. The contracting officer shall ascertain periodically whether existing authorizations for standby or lay-away requirements are current.

1845.7210–2 Records of surveys.

The property administrator shall prepare a record incorporating written findings, conclusions, and recommendations at the conclusion of each survey. If appropriate, the property administrator's record may be limited to a statement expressing concurrence with the reports of other specialists. The property administrator shall retain one copy of each record in the property administration file.

PART 1846—QUALITY ASSURANCE

Subpart 1846.3—Contract Clauses

Sec.
1846.370 NASA contract clauses.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contract clause.

Subpart 1846.6—Material Inspection and Receiving Reports

1846.670 Introduction.
1846.670–1 General.
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1846.671 Contract quality assurance on shipments between contractors.
1846.672 Preparing DD Forms 250 and 250c.
1846.672–1 Preparation instructions.
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1846.674 Contract clause.

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.
1846.703–70 Additional criteria.
1846.704 Authority for use of warranties.
1846.770 Administration.

AUTHORITY: U.S.C. 2473(c)(1).

SOURCE: 62 FR 14024, Mar. 25, 1997, unless otherwise noted.

Subpart 1846.3—Contract Clauses

1846.370 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.246–70, Mission Critical Space System Personnel Reliability Program, in solicitations and contracts involving critical positions designated in accordance with 14 CFR 1214.5, Mission Critical Space System Personnel Reliability Program.

(b) The contracting officer shall insert the clause at 1852.246–73, Human Space Flight Item, in solicitations and contracts for human space flight hardware and flight-related equipment if the highest available quality standards are necessary to ensure astronaut safety.

Subpart 1846.4—Government Contract Quality Assurance

1846.470 Contrct clause.

The contracting officer may insert a clause substantially as stated at 1852.246–71, Government Contract Quality Assurance Functions, in solicitations and contracts to specify the location(s) of quality assurance functions.

Subpart 1846.6—Material Inspection and Receiving Reports.

1846.670 Introduction.

1846.670–1 General.

(a) This Subpart contains procedures and instructions for use of the Material Inspection and Receiving Report (MIRR) (DD Form 250 series) and commercial shipping/packing lists used to evidence Government contract quality assurance (CQA).

(b) MIRRs are used to document CQA, acceptance of supplies and services, and shipments. MIRRs are not used for—

(1) Shipments by subcontractors not made to the Government;

(2) Shipment of contractor inventory (see FAR 45.601); or

(3) Movement of Government property unless for original acquisition.

1846.670–2 Applicability.

(a) This subpart applies to all deliveries of supplies or services acquired by or for NASA except:

(1) Acquisitions under FAR part 13;

(2) Negotiated subsistence acquisitions; or

(3) Contracts for which the end item is a technical or scientific report.

(b) The DD Form 250 may be used for imprest fund purchases, purchase orders, delivery orders placed against Federal Supply Schedule contracts, delivery orders placed against indefinite-delivery contracts, or delivery orders placed against blanket purchase agreements, or when the purchasing, requisitioning, or ordering document provides for inspection and/or acceptance.

(c) When NASA provides CQA and/or acceptance services for non-NASA activities, the MIRR shall be prepared in accordance with the instructions of this subpart unless the contract specifies otherwise.

1846.670–3 Use.

The DD Form 250 is a multipurpose report used for—

(a) Providing evidence of CQA at origin or destination;

(b) Providing evidence of acceptance at origin or destination;

(c) Packing list documentation;

(d) Receiving;

(e) Shipping;

(f) Contractor invoice; and

(g) Contractor invoice support.

1846.670–4 Multiple shipments.

(a) If the ''shipped to,'' ''marked for,'' ''shipped from,'' ''CQA,'' and ''acceptance'' data are the same for more than one shipment made on the same day under the same contract in a single car, truck, or other vehicle, one MIRR shall be prepared to cover all such shipments.

(b) If the volume of the shipments precludes the use of a single car, truck, or other vehicle, a separate MIRR shall be provided for each vehicle.

1846.670–5 Forms.

(a) Contractors may obtain MIRR forms from the contracting office at no cost.

(b) Contractors may print forms, provided their format and dimensions are identical to the MIRR forms printed by the Government.

1846.671 Contract quality assurance on shipments between contractors.

(a) The supplier's commercial shipping document/packing list shall indicate performance of required CQA actions at subcontract level.

The following entries shall be made on the document/packing list:

Required CQA of items has been performed.

_____

(Signature of Authorized Government Representative)

_____

(Date)

_____

(Typed Name and Office)

(b) Distribution for Government purposes shall be one copy each—

(1) With shipment;

(2) For the Government representative at consignee (via mail); and

(3) For the Government representative at consignor.

1846.672 Preparing DD Forms 250 and 250c.

1846.672–1 Preparation instructions.

(a) General. (1) Dates shall utilize seven spaces consisting of the last two digits of the year, three-alpha month abbreviation, and two digits for the day (e.g., 96SEP24).

(2) Addresses shall consist of the name, street address/P.O. box, city, State, and ZIP code.

(3) The data entered in the blocks at the top of DD Form 250C shall be identical to the comparable entries in Blocks 1, 2, 3, and 6 of the DD Form 250.

(4) Overflow data of the DD Form 250 shall be entered in Block 16 or in the body of the DD Form 250c with block cross reference. Additional DD Form 250c sheets solely for continuation of Block 23 data shall not be numbered or distributed as part of the MIRR.

(b) *Classified information.* Classified information shall not appear on the MIRR, nor shall the MIRR be classified.

(c) *Block 1—PROC. INSTRUMENT IDEN. (CONTRACT).* Enter the contract number, with its identifying center prefix, as contained in the contractual document, including any call/order number.

(d) *Block 2—SHIPMENT NO.* (1) The shipment number is a three-alpha character prefix and a four-character numeric or alpha-numeric serial number.

(i) The prefix shall be controlled and assigned by the prime contractor and shall consist of three alpha characters for each ''shipped from'' address (Block 11). The prefix shall be different for each ''Shipped From'' address and shall remain constant throughout the contract period.

(ii) The serial number for the first shipment under a prime contract from each ''shipped from'' address shall be 0001; subsequent shipments under that prime contract shall be consecutively numbered. Alpha-numerics shall be used when more than 9,999 numbers are required. Alpha-numerics shall be serially assigned, with the alpha in the first position, followed by the three-position numeric serial number. The alpha-numeric sequence shall be (the letters I and O shall not be used) A001 through A999 (10,001 through 10,999); B001 through B999 (11,001 through 11,999); to Z999. When this series is completely used, numbering shall revert to 0001.

(2) The shipment number of the initial shipment shall be reassigned when a ''replacement shipment'' is involved (see paragraph (r)(4)(iv) of this section).

(3) The prime contractor shall control deliveries and on the last shipment of the contract shall suffix the shipment number with a ''Z'' in addition to that required for line items (see Block 17). If the contract final shipment is from other than the prime contractor's plant, the prime contractor may elect

(i) To direct the subcontractor to suffix the ''Z'' or

(ii), On receipt of the subcontractor final shipment information, to correct the DD Form 250 covering the last shipment from the prime contractor's plant by adding a ''Z'' to that shipment number.

(e) *Block 3—DATE SHIPPED.* Enter the date the shipment is released to the carrier or the date of completion of services. If the shipment will be released after the date of CQA and/or acceptance, enter the estimated date of release. When the date is estimated, enter an ''E'' after it. Distribution of the MIRR shall not be delayed for entry of the actual shipping date. Reissurance of the MIRR is not required to show the actual shipping date.

(f) *Block 4—B/L TCN.* When applicable, enter the commercial or Government bill of lading number after ''B/L''; and the Transportation Control Number after ''TCN.''

(g) *Block 5—DISCOUNT TERMS.* (1) The Contractor may enter the discount in terms of percentages on all copies of the MIRR.

(2) When the MIRR is used as an invoice, see 1846.672–5.

(h) *Block 6—INVOICE.* (1) The contractor may enter the invoice number and actual or estimated date on all copies of the MIRR. When the date is

estimated, enter an ''E'' after the date. Do not correct MIRRs other than invoice copies to reflect the actual date of invoice submission.

(2) When the MIRR is used as an invoice, see 1846.672–5.

(i) *Block 7—PAGE/OF.* Consecutively number the pages comprising the MIRR. On each page, enter the total number of pages of the MIRR.

(j) *Block 8—ACCEPTANCE POINT.* Enter an ''S'' for origin or ''D'' for destination as specified in the contract as the point of acceptance. Enter an alphabetic ''O'' for other if the point of acceptance is not specified in the contract.

(k) *Block 9—PRIME CONTRACTOR.* Enter the code and address.

(l) *Block 10—ADMINISTERED BY.* Enter the code and address of the contracting office cited in the contract.

(m) *Block 11—SHIPPED FROM/CODE/FOB.* (1) Enter the code and address of the ''shipped from'' location. If identical to Block 9, enter ''See Block 9.''

(2) For performance of services that do not require delivery of items upon completion, enter the code and address of the location at which the services were performed. If the DD Form 250 covers performance at multiple locations or if identical to Block 9, enter ''See Block 9.''

(3) Enter on the same line and to the right of ''FOB'' an ''S'' for origin or ''D'' for destination as specified in the contract. Enter an alphabetic ''O'' if the FOB point cited in the contract is other than origin or destination.

(n) *Block 12—PAYMENT WILL BE MADE BY.* Enter the address of the payment office cited in the contract.

(o) *Block 13—SHIPPED TO/CODE.* Enter the code and address from the contract or shipping instructions.

(p) *Block 14—MARKED FOR/CODE.* Enter the code and address from the contract or shipping instructions.

(q) *Block 15—ITEM NO.* Enter the item number used in the contract. If four or fewer digits are used, position them to the left of the vertical dashed line. Where a six-digit identification is used, enter the last two digits to the right of the vertical dashed line.

(r) *Block 16—STOCK/PART NO./DESCRIPTION.* (1) Enter, as applicable, for each item, using single spacing between each line item, the following:

(i) The Federal Stock Number (FSN) or noncatalog number and, if applicable, prefix or suffix. When a number is not provided or it is necessary to supplement the number, include other identification such as the manufacturer's name or Federal Supply Code (as published in Cataloging Handbook H4–1), and part numbers. Additional part numbers may be shown in parentheses. Also enter the descriptive noun of the item nomenclature and, if provided, the Government-assigned management/material control code. In the case of equal-kind supply items, the first entry shall be the description without regard to kind (e.g., ''Resistor''). Below this description, enter the contract item number in Block 15 and stock/part number followed by the size or type in Block 16.

(ii) On the next printing line, if required by the contract for control purposes, enter the make, model, serial number, lot, batch, hazard indicator, and/or similar description.

(iii) On the next printing line, enter the FEDSTRIP requisition number(s) when provided in the contract or shipping instructions.

(2) For service items, enter the word ''SERVICE'' followed by a short description of less than 20 characters. Do not complete items 4, 13, and 14 when material is not shipped.

(3) For all contracts administered by the Defense Contract Management Command, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt.____(State weight in pounds only).

(4) Enter on the next line the following as appropriate (entries may be extended through Block 20). When entries apply to more than one item in the MIRR, enter them only once after the last item and reference the applicable item numbers.

(i) Enter in capital letters any special handling instructions/limits for material environmental control (e.g., temperature, humidity, aging, freezing, and shock).

(ii) When an FSN is required by, but not cited in, a contract and has not

been furnished by the Government, shipment may be made at the direction of the contracting officer. Enter the authority for the shipment.

(iii) When Government-furnished property (GFP) is included with or incorporated into the line item, enter ''GFP''.

(iv) When the shipment consists of replacements for supplies previously furnished, enter in capital letters ''REPLACEMENT SHIPMENT'' (see paragraph (s)(3) of this section for replacement indicators.)

(v) For items shipped with missing components, enter and complete the following: ''Item(s) shipped short of the following component(s): FSN or comparable identification _____, Quantity _____, Estimated Value _____, Authority _____.''

(vi) When shipment is made of components that were short on a prior shipment, enter and complete the following: ''These components were listed as shortages on Shipment Number _____, date shipped_____.''

(vii) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: ''Return to _____, Quantity _____, Item _____, Ownership (Government/contractor).''

(viii) Enter shipping container number(s), the type, and the total number of the shipping container(s) included in the shipment.

(ix) The MIRR shall be used to record and report the waivers and deviations from contract specifications, including the source and authority for the waiver or deviation (e.g., the contracting office authorizing the waiver or deviation and the identification of the authorizing document).

(x) For shipments involving discount terms, enter ''DISCOUNT EXPEDITE'' in at least one-inch outline-type letters.

(xi) When test/evaluation results are a condition of acceptance and are not available before shipment, the following note shall be entered if the shipment is approved by the contracting officer: ''Note: Acceptance and payment are contingent upon receipt of approved test/evalution results.'' The contracting officer shall advise (A) the consignee of the results (approval/disapproval) and (B) the contractor to withhold invoicing pending attachment to its invoice of the approved test/evaluation results.

(xii) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of the four with shipment) or Alternative Release Procedure (ARP) origin acceptance (additional copy furnished to the Quality Assurance Representative (QAR)) shall be identified by entering ''PAYMENT COPY'' in approximately one-half-inch outline-type letters with ''FORWARD TO BLOCK 12 ADDRESS'' in approximately one-quarter-inch letters immediately below. Do not obliterate any other entries.

(xiii) A double line shall be drawn completely across the form following the last entry.

(s) *Block 17—QUANTITY SHIP/REC'D.* (1) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(2) Enter a ''Z'' below the first digit of the quantity when the total quantity of the item is delivered, including variations within contract terms; and all shortages on items previously shipped short are delivered.

(3) If a replacement shipment is involved, enter below the first digit of the quantity the letter ''A'' top designate first replacement, ''B'' for second replacement, and so forth. The final shipment indicator ''Z'' shall not be used when a final line item shipment is replaced.

(t) *Block 18 UNIT.* Enter the abbreviation of the unit of measure indicated in the contract for payment. When a second unit of measure is indicated in the contract for purposes other than payment or is used for shipping purposes, enter the abbreviation of the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL–STD–129, Marking for Shipping and Storage.

(u) *Block 19—UNIT PRICE.* Enter the unit price on all NASA copies whenever the MIRR is used for voucher or receiving purposes.

(v) *Block 20—AMOUNT.* Enter the extended amount when the unit price is entered in Block 19.

(w) *Block 21—CONTRACT QUALITY ASSURANCE.* The words ''conform to contract'' contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with block cross reference.

(1) *''A. ORIGIN.''*

(i) The authorized Government representative shall—

(A) Place an ''X'' when applicable in the appropriate CQA and/or acceptance box(es) to evidence origin CQA and/or acceptance. When the contract requires CQA at destination in addition to origin CQA, an asterisk shall be entered at the end of the statement and an explanatory note in Block 16;

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(2) *''B. DESTINATION.''*

(i) When acceptance at origin is indicated in Block 21A, no entries shall be made in Block 21B.

(ii) When acceptance of CQA and acceptance are at destination, the authorized Government representative shall—

(A) Place an ''X'' in the appropriate box(es);

(B) Sign and date; and

(C) Enter the typed, stamped, or printed name of the signer and office code.

(x) *Block 22—RECEIVER'S USE.* This block shall be used by the receiving authority (Government or contractor) to denote receipt, quantity, and condition. The receiving activity shall enter in this block the date the supplies arrived. For example, when off-loading or in-checking occurs subsequent to the day of arrival of the carrier at the installation, the date of the carrier's arrival is the date received for purposes of this block.

(y) *Block 23—CONTRACTOR USE ONLY.* This block is provided and reserved for contractor use.

1846.672–2 Consolidated shipments.

When individual shipments are held at the contractor's plant for authorized transportation consolidation to a single destination on a single bill of lading, the applicable DD Forms 250 may be prepared at the time of CQA or acceptance prior to the time of actual shipment (see Block 3).

1846.672–3 Multiple consignee instructions.

The contractor may prepare one MIRR when the identical item(s) of a contract is to be shipped to more than one consignee, with the same or varying quantities, and the shipment requires origin acceptance. Prepare the MIRR using the procedures in this subpart with the following changes:

(a) Blocks 2, 4, 13, and, if applicable, 14—Enter ''See Attached Distribution List.''

(b) Block 15—The contractor may group item numbers for identical stock/part number and description.

(c) Block 17—Enter the ''total'' quantity shipped by item or, if applicable, grouped identical items.

(d) Use the DD Form 250c to list each individual ''Shipped To'' and ''Marked For'' with—

(1) Code(s) and complete shipping address and a sequential shipment number for each;

(2) Item number(s);

(3) Quantity;

(4) The FEDSTRIP requisition number and quantity for each when provided in the contract or shipping instructions; and

(5) If applicable, bill of lading number and mode of shipment code.

1846.672–4 Correction instructions.

When, because of errors or omissions, it is necessary to correct the MIRR after distribution, it shall be revised by correcting the original master and distributing the corrected form. The corrections shall be made as follows:

(a) Circle the error and place the corrected information in the same block. If space is limited, enter the corrected information in Block 16, referencing the error page and block.

(b) When corrections are made to Blocks 15 and 17, enter the words

''CORRECTIONS HAVE BEEN VERIFIED'' on page 1. The authorized Government representative shall date and sign immediately below the statement. This verification statement and signature are not required for other corrections.

(c) MIRRs shall not be corrected for Block 19 and 20 entries.

(d) Clearly mark pages of the MIRR requiring correction with the words *''CORRECTED COPY''*, avoiding obliteration of any other entries. Even though corrections are made on continuation sheets only, also mark page 1 *''CORRECTED COPY''*.

(e) Page 1 and only those continuation pages marked *''CORRECTED COPY''* shall be distributed to the initial distribution. A complete MIRR with corrections shall be distributed to new addressee(s) created by error corrections.

1846.672–5 Invoice instructions.

The Government encourages, but does not require, contractors to use copies of the MIRR as an invoice in lieu of a commercial form. If the MIRR is used as an invoice, four copies shall be prepared and forwarded to the payment office as follows:

(a) Complete Blocks 5, 6, 19, and 20.

(b) Mark, in letters approximately one inch high, the first copy *''ORIGINAL INVOICE''* and the remaining three copies *''INVOICE COPY''*.

(c) Forward the four copies to the payment office (Block 12 address).

1846.672–6 Packing list instructions.

Copies of the MIRR may be used as a packing list. The packing list copies shall be in addition to the copies of the MIRR required for distribution (see 1846.673) and shall be marked ''PACKING LIST''.

1846.672–7 Receiving instructions.

When the MIRR is used for receiving purposes, procedures shall be as prescribed by local directives. If acceptance or CQA and acceptance of supplies are required upon arrival at destination, see Block 21B for instructions.

1846.673 Distribution of DD Forms 250 and 250c.

(a) DD Forms 250 and 250c shall be distributed in accordance with installation procedures.

(b) The contractor is responsible for distributing DD Forms 250 and 250c in accordance with the provisions of the contract or instructions of the contracting officer.

1846.674 Contract clause.

The contracting officer shall insert the clause at 1852.246–72, Material Inspection and Receiving Report, in solicitations and contracts, except those using simplified acquisition procedures or where the only deliverable items are technical or scientific reports. Insert the number of copies to be prepared. Paragraph (a) may be changed to specify advance copies or separate distribution of the DD Form 250.

Subpart 1846.7—Warranties

1846.703 Criteria for use of warranties.

1846.703–70 Additional criteria.

In deciding whether to use a warranty clause, at least the following factors shall be considered in addition to those at FAR 46.703:

(a) Cost of correction or replacement, either by the contractor or by another source, in the absence of a warranty;

(b) The warranty as a deterrent against the furnishing of defective or nonconforming supplies;

(c) Whether the contractor's quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective quality program;

(d) Reliance on ''brand-name'' integrity; and

(e) Whether a warranty is regularly given for a commercial component of a more complex end item.

1846.704 Authority for use of warranties. (NASA paragraphs (1), (2) and (3))

(1) A warranty clause may be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in 1846.703–70 and FAR 46.703.

(2) Except for the warranty of commercial items (see FAR 12.404 and 46.709), and warranties contained in Federal, military, or construction specifications, the decision to use a warranty clause or to include a warranty provision in a specification other than a Federal, military, or construction specification shall be made only upon the written authorization of the procurement officer or a designee. This decision may be made either for individual acquisitions or classes of acquisitions.

(3) Warranties required by applicable architect-engineer specifications shall be included in construction contracts.

1846.770 Administration.

When notified of a defect in warranted items, the contracting officer should ascertain whether the warranty is currently in effect and ensure that the contractor is given proper and timely notice of the defect.

PART 1847—TRANSPORTATION

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

Sec.

1847.200 Scope of subpart.
1847.200–70 Charter of aircraft.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.
1847.304–3 Shipments from CONUS for overseas delivery.
1847.304–370 NASA export privilege.
1847.305 Solicitation provisions, contract clauses, and transportation factors.
1847.305–10 Packing, marking, and consignment instructions.
1847.305–13 Transit arrangements.
1847.305–70 NASA contract clauses.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14028, Mar. 25, 1997, unless otherwise noted.

Subpart 1847.2—Contracts for Transportation or for Transportation-Related Services

1847.200 Scope of subpart.

1847.200–70 Charter of aircraft.

When acquiring aircraft by charter, contracting officers shall comply with NHB 7900.3, Aircraft Operations Management Manual.

Subpart 1847.3—Transportation in Supply Contracts

1847.304 Determination of delivery terms.

1847.304–3 Shipments from CONUS for overseas delivery.

1847.304–370 NASA export privilege.

NASA has export licensing privileges for moving commodities to foreign destinations. Contracting officers shall request the advice of the Center Export Administrator to ensure full and appropriate use is made of these privileges.

1847.305 Solicitation provisions, contract clauses, and transportation factors.

1847.305–10 Packing, marking, and consignment instructions.

In contracts providing for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state: ''Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor.''

1847.305–13 Transit arrangements. (NASA supplements paragraph (a))

(a)(3)(ii) When the provision at FAR 52.247–56 is used, the solicitation shall state that offers will be evaluated on

the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

1847.305–70 NASA contract clauses.

(a) The contracting officer may insert a clause substantially as stated at 1852.247–72, Advance Notice of Shipment, in solicitations and contracts when the f.o.b. point is destination and special Government assistance is required in the delivery or receipt of the items.

(b) The contracting officer may insert a clause substantially as stated at 1852.247–73, Shipment of Government Bills of Lading, in f.o.b. origin solicitations and contracts.

Subpart 1847.5—Ocean Transportation by U.S.-Flag Vessels

1847.506 Procedures. (NASA supplements paragraph (d))

(d)(i) The transportation officer in each installation shall establish and maintain a register to reflect adherence to the Cargo Preference Act. The register shall contain data related to shipments made by the installation and by NASA contractors. Where no transportation officer is available, it shall be maintained by the contracting office. The register shall contain pertinent details of ocean shipments including, but not limited to, the ports of origin and destination of shipments, commodity descriptions, gross weight, freight revenue, name of vessel, operator of vessel, and date of loading. The register shall be maintained current and organized so that adherence to the Cargo Preference Act can be ascertained at all times. To the maximum practicable extent, compliance with the 50-percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis; any deficiencies in maintaining compliance shall be corrected by the end of the calendar year.

(ii) On the basis of the registers maintained under paragraph (d)(i) of this section, the official maintaining the register shall submit quarterly reports reflecting ocean shipments to the Division of National Cargo, Office of Market Development, Maritime Administration, Department of Transportation, Washington, DC, 20590. Negative reports are required when applicable.

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247–71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of waterways inhabited by manatees. The clause shall also be included in applicable subcontracts (including vendor deliveries).

PART 1848—VALUE ENGINEERING

Subpart 1848.1—Policies and Procedures

Sec.
1848.102 Policies.
1848.103 Processing value engineering change proposals.
1848.104 Sharing arrangements.
1848.104–2 Sharing collateral savings.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14029, Mar. 25, 1997, unless otherwise noted.

Subpart 1848.1—Policies and Procedures

1848.102 Policies. (NASA supplements paragraphs (a) and (f))

(a) The Associate Administrator for Procurement (Code HS) is the approval authority for exemptions.

(f) In calculating instant or future contract savings on firm-fixed-price contracts when the parties have not set out a specific figure for profit, the contracting officer shall use the total contract price as the basis for calculating the savings.

1848.103 Processing value engineering change proposals. (NASA supplements paragraph (a))

(a) Upon receipt of a VECP, the contracting officer shall promptly forward

it to the technical officer responsible for the contract with the following information:

(i) Date of VECP receipt;

(ii) Date for notifying the contractor of VECP acceptance or rejection;

(iii) Notification of the potential for awarding concurrent, future, or collateral savings to the contractor if the VECP is accepted;

(iv) Request for a technical evaluation, with complete rationale for recommended acceptance or rejection, to include if acceptance is recommended:

(A) An estimate of the type of savings, Government costs, etc., that can be expected from its acceptance;

(B) A procurement request setting forth the specification changes to be used in any contract modification accepting the VECP in whole or in part; and

(C) Additional funds if acceptance of the VECP results in negative instant contract savings.

(v) Technical evaluation due date.

1848.104 Sharing arrangements.

1848.104–2 Sharing collateral savings.

The contracting officer is authorized to make the determination that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

Subpart 1848.2—Contract Clauses

1848.201 Clauses for supply or service contracts. (NASA supplements paragraphs (a), (b), (c), and (d))

(a)(6) The Associate Administrator for Procurement (Code HS) is the approval authority for exemptions.

(b) The contracting officer shall not insert the clause at FAR 52.248–1, Value Engineering, either with or without its Alternates, in an R&D contract where the statement of work is essentially an incorporation by reference of the prospective contractor's proposal. If any other part of the statement of work in such a contract reflects a Government specification that might benefit from application of VE techniques, the contracting officer shall consider inserting the VE incentive clause at FAR 52.248–1 with any applicable Alternate(s), and establish the applicability of the clause to that part.

(c) Except as prescribed in paragraph (b) of this section, the contracting officer shall insert the clause at FAR 52.248–1 with its Alternate I in initial production contracts for major systems, and major systems R&D contracts for full-scale development, unless the contracting officer determines in writing that its use is inappropriate. Use of Alternate I is appropriate for an R&D major systems contract only if the contract specifications contain detailed requirements that lend themselves to VE.

(d) The contracting officer shall insert the clause at FAR 52.248–1 with its Alternate II under the conditions prescribed in paragraph (c) of this section

PART 1849—TERMINATION OF CONTRACTS

Subpart 1849.1—General Principles

Sec.
1849.101 Authorities and responsibilities.
1849.101–70 NASA authorities and responsibilities.
1849.101–71 Termination authority.
1849.102 Notice of termination.
1849.102–70 Prior clearance of significant contract terminations.
1849.105 Duties of termination contracting officer after issuance of notice of termination.
1849.105–70 Termination docket checklist.
1849.110 Settlement negotiation memorandum.
1849.110–70 Memorandum contents.
1849.111 Review of proposed settlements.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clauses.
1849.505–70 NASA contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14030, Mar. 25, 1997, unless otherwise noted.

Subpart 1849.1—General Principles

1849.101 Authorities and responsibilities.

1849.101–70 NASA authorities and responsibilities.

(a) Installations shall appoint a termination contracting officer (TCO) (see FAR 2.101) to perform specific duties relating to contract termination as one of that individual's primary functions. In addition to the responsibilities described in this part and FAR part 49, such duties should include—

(1) Reviewing NASA Forms 1412, Termination Authority;

(2) Reviewing the contract and related documents before issuing the notice of termination, to ensure protection of the Government's rights under the contract; and

(3) Issuing notices of termination, reinstatement, and recision to contractors;

(b) Contracting offices shall utilize the services of the Department of Defense and other Government agencies whenever possible to administer and negotiate settlement of terminated contracts. Delegation of the negotiation of termination settlement function shall be made in accordance with FAR subpart 42.2 and 1842.2.

1849.101–71 Termination authority.

NASA Form 1412, Termination Authority, is prescribed for use by NASA installations when initiating action to terminate a contract for convenience or default. The project manager or the activity initiating the procurement request should initiate the action by completing NASA Form 1412 and submitting it to the contracting officer.

1849.102 Notice of termination.

1849.102–70 Prior clearance of significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through the Headquarters Office of Legislative Affairs (Code LB) before release of the termination notice, or any information on the proposed termination, to the contractor. Proposed terminations expected to result in a reduction of fewer than 100 should be similarly cleared if the installation believes it to be significant.

(b) The contracting officer shall submit the following information to Code LB, and a copy to the Office of Procurement (Code HS), as soon as possible after the decision to terminate is made. Until clearance is obtained, this information shall be treated as ''For Official Use Only'' unless the information is classified.

(1) Contract number.

(2) Date of award.

(3) Type of award.

(4) Name of company.

(5) Nature of contract or end item.

(6) Reasons for the termination.

(7) Contract price of items terminated.

(8) Total number of contractor employees involved, including the Government's estimate of the number that may be discharged.

(9) Anticipated impact on the company and the community.

(10) Name of the community affected.

(11) Area labor category.

(12) Whether contractor is large or small business.

(13) Any known impact on disadvantaged employment programs.

(14) Total number of subcontractors involved and the impact in this area, if known.

(15) Unclassified draft of suggested press release.

(c) To minimize termination costs, Code LB shall act promptly on the request and provide a response not later than two working days after receipt of the information in paragraph (b) of this section.

1849.105 Duties of termination contracting officer after issuance of notice of termination.

1849.105–70 Termination docket checklist.

The termination contracting officer shall complete NASA Form 1413, Termination Docket Checklist.

1849.110 Settlement negotiation memorandum.

1849.110–70 Memorandum contents.

The TCO shall include the following information in the settlement negotiation memorandum. Contractors and subcontractors are encouraged to use this format appropriately modified for subcontract settlements submitted for review and approval.

(a) General information—(1) Identification. (i) Name and address of the contractor and any pertinent affiliation between prime contractors and subcontractors relative to the overall settlement.

(ii) Names and titles of contractor and Government personnel who participated in the negotiation.

(2) Description of terminated contract.

(i) Contract number;

(ii) Date of award;

(iii) Contract type;

(iv) General description of contract items;

(v) Total contract price; and

(vi) Applicable contract termination provisions and clause.

(3) Termination notice.

(i) Date of the termination notice;

(ii) Effective date of termination;

(iii) Scope and nature of termination (complete or partial);

(iv) Items terminated;

(v) Unit prices;

(vi) Total price of items terminated for fixed-price contracts or the estimated cost and fee applicable to items terminated for cost-reimbursement type contracts;

(vii) Whether the termination notice was amended and, if so, why;

(viii) Whether the contractor stopped work on the termination effective date (if it did not, furnish details) and whether subcontracts were terminated promptly;

(ix) Any redirection of common items and return of goods to the contractor's suppliers; and

(x) Extent of contract performance and timely deliveries by the contractor.

(b) Contractor's settlement proposal—(1) Date and amount. Date and location where the claim was filed and its gross amount (if interim settlement proposals were filed, information shall be furnished for each claim).

(2) Basis of claim. E.g., inventory, total cost, or other basis, including an explanation of any approvals granted in connection with submission on other than an inventory basis.

(3) Examination of proposal. Types of reviews made and by whom (audit, engineering, legal, or other).

(c) Tabular summary of contractor's claim and the settlement. The cost elements/items, the amounts claimed, the Government recommended position (including auditor, field, and technical personnel recommendations), and the negotiated settlement amounts. This summary shall include, if appropriate, previously reimbursed and unreimbursed costs applicable to the prime contractor and subcontractor, previous profit/fees paid and unpaid; settlement cost less disposal credit or other credits, and a recapitulation of previous settlements. The summary of the negotiated settlement shall include the amount claimed and allowed for contractor and/or subcontractor changes, disposal, prior payment credits, and contract price.

(d) Settlement narrative summary.

(1) Contractor's cost.

(2) Profit/Fee.

(3) Settlement expenses not included in the audit.

(4) Number and dollar amount of any subcontractor settlements approved by the TCO and concluded by the contractor under delegation of authority.

(5) Total amount of any partial payments.

(6) Total of unliquidated progress or advance payments.

(7) Claims of the Government against the contractor included in settlement agreement reservations.

(8) Assignments, including the name and address of each assignee.

(9) Disposal credits.

(10) Status of plant clearance actions and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations, including a consolidated closing plant clearance report, if applicable.

(11) Status of Government property accountability.

(12) Disposition of any special tooling, if applicable.

(13) Proposed reservations of rights to the Government or to the contractor.

(e) Recommendation. Amount of the gross settlement recommended and TCO statement that it is fair and reasonable to the Government and the contractor.

(f) TCO Signature and date.

1849.111 Review of proposed settlements. (NASA paragraphs (1) and (2))

(1) Settlements shall be reviewed in accordance with center-prescribed procedures.

(2) The TCO may authorize the contract administration office cognizant of a lower-tier subcontractor grant approval or ratification of proposed subcontractor settlements described in FAR 49.108–3(c) that are first reviewed and referred by the prime contractor to the TCO. This procedure is not applicable to settlements between the contractor and its first tier subcontractors.

Subpart 1849.5—Contract Termination Clauses

1849.505 Other termination clause.

1849.505–70 NASA contract clause.

The contracting officer shall insert the clause at 1852.249–72, Termination (Utilities), in all solicitations and contracts for utilities services.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

Sec.

1850.202 Contract adjustment boards.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.
1850.305–70 Submission of request to the Contract Adjustment Board.
1850.306 Disposition.
1850.306–70 Implementation of the Contract Adjustment Board's decision.

Subpart 1850.4—Residual Powers

1850.403 Special procedures for unusually hazardous or nuclear risks.
1850.403–1 Indemnification requests.
1850.403–170 Subcontractor indemnification requests.
1850.403–2 Action on indemnification requests.
1850.470 Lead NASA installation.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14031, Mar. 25, 1997, unless otherwise noted.

Subpart 1850.2—Delegation of and Limitations on Exercise of Authority

1850.202 Contract adjustment boards.

14 CFR part 1209, subpart 3, Contract Adjustment Board, establishes the Contract Adjustment Board (CAB) as the approving authority to consider and dispose of requests from NASA contractors for extraordinary contractual actions.

Subpart 1850.3—Contract Adjustments

1850.305 Processing cases.

1850.305–70 Submission of request to the Contract Adjustment Board.

(a) After investigating the facts and issues relevant to the contractor's request, the contracting officer shall forward the request to the Associate General Counsel for General Law (Code GG), including in the forwarding letter—

(1) The nature of the case;

(2) The recommended disposition; and,

(3) If contractual action is recommended, the contracting officer's opinion that the action will facilitate the national defense.

(b) The forwarding letter shall enclose the contractor's request, all supporting material submitted by the contractor, and any material the contracting officer has obtained while investigating the facts and issues relevant to the request. Any classified information in the material forwarded shall be so identified.

(c) Electronic submittal is preferred for unclassified material.

1850.306 Disposition.

1850.306–70 Implementation of the Contract Adjustment Board's decision.

(a) The contracting officer shall take action authorized in the CAB's decision.

(b) Immediately upon execution, including any required Headquarters approval, of a contract or contract modification or amendment implementing the CAB decision, the contracting officer shall forward a copy of the contractual document to the Associate General Counsel for General Law (Code GG).

Subpart 1850.4—Residual Powers

1850.403 Special procedures for unusually hazardous or nuclear risks.

1850.403–1 Indemnification requests. (NASA supplements paragraph (a))

(a) The contractor shall also provide evidence, such as a certificate of insurance or other customary proof of insurance, that such insurance is either in force or is available and will be in force during the indemnified period.

1850.403–170 Subcontractor indemnification requests.

Subcontractors shall submit requests for indemnification to the prime contractor and through higher tier subcontractor(s), as applicable. If the prime contractor agrees an indemnity clause should be flowed down to the subcontractor, the prime contractor shall forward its written request for subcontractor indemnification to the cognizant contracting officer for approval in accordance with FAR 50.403–1. The prime contractor's request shall provide information responsive to 1850.403–1, FAR 50.403–1, and FAR 50.403–2(a) (1), (2), (4), (5) and (7). The agreed upon definition of the unusually hazardous risk to be incorporated into the subcontract shall be the same as that incorporated in the prime contract.

1850.403–2 Action on indemnification requests. (NASA supplements paragraphs (a) and (d))

(a) If recommending approval, the contracting officer shall forward the required information to the Associate Administrator for Procurement (Code HS), along with the following:

(i) For contracts of five years duration or longer, a determination, with supporting rationale, whether the indemnification approval and insurance coverage and premiums should be reviewed for adequacy and continued validity at points in time within the extended contract period.

(ii) A recommended Memorandum of Decision. In addition to the applicable requirements of FAR 50.306, the Memorandum of Decision shall contain the following:

(A) The specific definition of the unusually hazardous risk to which the contractor is exposed in the performance of the contract(s);

(B) A complete discussion of the contractor's financial protection program; and

(C) The extend to, and conditions under, which indemnification is being approved for subcontracts.

(d) If approving subcontractor indemnification, the contracting officer shall document the file with a memorandum for record addressing the items set forth in FAR 50.403–2(a) and include an analysis of the subcontractor's financial protection program. In performing this analysis, the contracting officer shall take into consideration the availability, cost, terms and conditions of insurance in relation to the unusually hazardous risk.

1850.470 Lead NASA installation.

(a) Contractors applying for indemnification shall determine which NASA installation has the highest dollar amount of contracts for which indemnification is requested. The indemnification request should be submitted to the procurement officer for that installation, who will then designate a cognizant contracting officer. Contractors shall submit a single request and

ensure duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

(b) The receiving installation will become the lead installation and will remain so indefinitely. Lead installation designation may change to another installation if the affected procurement officers agree to the change. Should a change occur in the lead installation, all records related to indemnification of that contractor shall be transferred to the gaining installation.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 1851.1—Contractor Use of Government Supply Sources

Sec.
1851.101 Policy.
1851.102 Authorization to use Government supply sources.
1851.102–70 Contractor acquisition of filing cabinets.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14032, Mar. 25, 1997, unless otherwise noted.

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.101 Policy.

Use of official Government mailing privileges by NASA contractors is covered in NMI 1450.11, NASA Mail Management Program.

1851.102 Authorization to use Government supply sources. (NASA supplements paragraph (e)).

(e) The contracting officer shall use substantially the following format for letters authorizing contractor use of Government supply sources:

SUBJECT: Authorization to Lease, Rent, or Purchase from General Services Administration (GSA) Supply Sources

(Contractor's name) _____

(Address) _____

(1) You are hereby authorized to act for the Government in the following matters:

(i) The acquisition of supplies and/or services under Contract No. _____ available for purchase by Government agencies either directly from GSA stock or under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(ii) The leasing or rental of equipment for use on Contract No. _____ available for lease or rental by Government agencies under Federal Supply Schedules, including GSA nonmandatory ADTS/ADP schedule contracts and GSA ADP requirements contracts, subject to the limitations set forth in this authorization.

(iii) The issuance of tax exemption certificates in lieu of the payment of State or other taxes for which the government is not liable on supplies or services purchased under this authorization.

(2)(i) Purchase orders under GSA schedules and contracts shall be placed in accordance with the terms and conditions of the GSA schedule or contract and this authorization. A copy of this authorization shall be attached to the order (unless a copy was previously furnished to the GSA contractor) and shall contain the following statement:

''This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. _____, pursuant to written authorization dated _____, a copy of which (is attached) (you have on file). In the event of any inconsistency between the terms and conditions of this order and those of the applicable GSA schedule/contract, the latter will govern.''

(ii) Orders for items in the GSA Supply Catalog shall be placed in accordance with the Catalog and this authorization and shall include the address to which billings are to be sent. Bills are not issued by GSA until after shipment has been made and should therefore be paid promptly. Any necessary adjustments will be made by GSA subsequent to payment. All orders shall contain the following statement:

''This order is placed on behalf of the National Aeronautics and Space Administration in furtherance of United States Government Contract No. _____, pursuant to written authorization dated _____, a copy of which (is attached) (you have on file).''

(3) (Insert any other provisions and restrictions.)

(4) The authority hereby granted is not transferable or assignable.

(Contracting Officer)

(e)(3) Contracting officers shall use NHB 4100.1, NASA Materials Inventory Management Manual, to obtain activity address codes to enable use of FEDSTRIP and MILSTRIP.

1851.102–70 Contractor acquisition of filing cabinets.

(a) The Contractor officer must approve any planned contractor acquisition of filing cabinets whose title will vest in the Government. The contracting officer shall ensure that the contractor takes the following actions before submitting a request for approval:

(1) Transfer inactive records to contractor storage areas;

(2) Dispose of unnecessary records in accordance with corporate procedures;

(3) Use less expensive shelf filing methods; and

(4) Take other actions to reduce the need for filing cabinets.

(b) If after taking the actions in paragraphs (a)(1) through (4) of this section, the contractor requires additional filing capacity, it shall submit for contracting officer approval a request to order filing cabinets. This request shall include a discussion of why sufficient additional filing capacity is necessary and shall address the results of the actions in paragraphs (a) (1) through (4) of this section. The contracting officer shall review the request in consultation with the Records Management Officer, the Property and Supply Officer, and the project officer, is appropriate.

(c) If the need for filing cabinets is approved, the contracting officer shall attempt to fill the need by providing any available excess items of the type required through appropriate property accountability channels. Approved requests that cannot be filled from excess shall be returned to the contractor with an authorization to obtain file cabinets, preferably through GSA.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1852.000 Scope of part.

Subpart 1852.1—Instructions for Using Provisions and Clauses

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1852.103 Identification of provisions and clauses.
1852.103–70 Identification of modified provisions and clauses.
1852.104 Procedures for modifying and completing provisions and clauses.

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1852.204–75 Security classification requirements.
1852.204–76 Security requirements for unclassified automated information resources.
1852.208–81 Restrictions on printing and duplicating.
1852.209–70 Product removal from Qualified Products List.
1852.209–71 Limitation of future contracting.
1852.209–72 Composition of the contractor.
1852.210–70 Brand name or equal.
1852.211–70 Brand name or equal.
1852.212–70 Notice of delay.
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1852.214–70 Caution to offerors furnishing descriptive literature.
1852.214–71 Grouping for aggregate award.
1852.214–72 Full quantities.
1852.215–73 Late submissions, modifications, and withdrawals of proposals (AO, SBIR, and STTR programs).
1852.215–74 Alternate proposals.
1852.215–75 Expenses related to offeror submissions.
1852.215–77 Preproposal/Pre-bid conference.
1852.215–78 Make or buy program requirements.
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1852.215–82 Offeror oral presentations.
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1852.216–73 Estimated cost and cost sharing.
1852.216–74 Estimated cost and fixed fee.
1852.216–75 Payment of fixed fee.
1852.216–76 Award fee for service contracts.
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1852.216–78 Firm fixed price.
1852.216–80 Task ordering procedure.
1852.216–81 Estimated cost.
1852.216–83 Fixed price incentive.
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1852.216–87 Submission of vouchers for payment.
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1852.216–89 Assignment and release forms.
1852.217–70 Property administration and reporting.
1852.219–73 Small, small disadvantaged, and women-owned small business subcontracting plan.
1852.219–74 Use of Rural Area Small Businesses.
1852.219–75 Small, Small disadvantaged, and women-owned small business subcontracting reporting.
1852.219–76 NASA 8 percent goal.
1852.219–77 NASA Mentor-Protégé program.
1852.219–79 Mentor requirements and evaluation.
1852.223–70 Safety and health.
1852.223–71 Frequency authorization.
1852.223–73 Safety and Health Plan.
1852.223–74 Drug– and alcohol–free workforce.
1852.225–71 Nondomestic construction materials.
1852.225–72 [Reserved]
1852.225–73 Duty-Free Entry Supplies.
1852.227–11 Patent Rights—Retention by the Contractor (Short Form).
1852.227–14 Rights in Data—General.
1852.227–17 Rights in Data–Special Works.
1852.227–19 Commercial Computer Software—Restricted Rights.
1852.227–70 New Technology.
1852.227–71 Requests for Waiver of Rights to Inventions.
1852.227–72 Designation of New Technology Representative and Patent Representative.
1852.227–84 Patent Rights Clauses.
1852.227–85 Invention Reporting and Rights—Foreign.
1852.227–86 Commercial Computer Software—Licensing.
1852.227–87 Transfer of Technical Data Under Space Station International Agreements.
1852.228–70 Aircraft ground and flight risk.
1852.228–71 Aircraft Flight Risks.
1852.228–72 Cross–Waiver of liability for space shuttle services.
1852.228–73 Bid Bond.
1852.228–75 Minimum Insurance Coverage.
1852.228–76 Cross-waiver of Liability for Space Station Activities.
1852.228–78 Cross–Waiver of Liability for NASA Expendable Launch Vehicle Launches.
1852.231–70 Precontract costs.

1852.231–71 Determination of compensation reasonableness.
1852.232–77 Limitation of Funds (Fixed-Price Contract).
1852.232–79 Payment for On-Site Preparatory Costs.
1852.232–81 Contract Funding.
1852.232–82 Submission of Requests for Progress Payments.
1852.233–70 Protests to NASA.
1852.234–70 Phased acquisition using down–selection procedures.
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1852.235–70 Center for AeroSpace Information.
1852.235–71 Key Personnel and Facilities.
1852.235–72 Instructions for responding to NASA Research Announcements.
1852.236–71 Additive or Deductive Items.
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1852.236–74 Magnitude of Requirement.
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1852.237–72 Identification of uncompensated overtime.
1852.239–70 Alternate Delivery Points.
1852.241–70 Renewal of Contract.
1852.242–70 Technical Direction.
1852.242–71 Travel Outside of the United States.
1852.242–72 Observance of Legal Holidays.
1852.242–73 NASA contractor financial management reporting.
1852.243–70 Engineering change proposals.
1852.243–71 Shared savings.
1852.244–70 Geographic Participation in the Aerospace Program.
1852.245–70 Contractor requests for government-owned equipment.
1852.245–71 Installation-accountable government property.
1852.245–72 Liability for Government Property Furnished for Repair or Other Services.
1852.245–73 Financial reporting of NASA property in the custody of contractors.
1852.245–74 Contractor Accountable On-Site Government Property.
1852.245–75 Title to Equipment.
1852.245–76 List of Government-Furnished Property.
1852.245–77 List of installation-accountable property and services.
1852.245–79 Use of government-owned property.
1852.245–80 Use of Government Production and Research Property on a No-Charge Basis.
1852.246–70 Mission Critical Space System Personnel Reliability Program.
1852.246–71 Government Contract Quality Assurance functions.
1852.246–72 Material Inspection and Receiving Report.
1652.246–73 Human Space Flight Item.
1852.247–71 Protection of the Florida Manatee.
1852.247–72 Advance Notice of Shipment.
1852.247–73 Shipment by Government Bills of Lading.
1852.249–72 Termination (Utilities).

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.
1852.301 Solicitation Provisions and Contract Clauses (Matrix).

AUTHORITY: 42 U.S.C. 2473 (c)(1).

SOURCE: 54 FR 28340, July 5, 1989, unless otherwise noted.

1852.000 Scope of part.

This part, in conjunction with FAR Part 52—

(a) Sets forth the provisions and clauses prescribed in the NFS,

(b) Gives instructions for their use, and

(c) Presents a matrix listing the provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

[61 FR 40547, Aug. 5, 1996]

Subpart 1852.1—Instructions for Using Provisions and Contracts

SOURCE: 61 FR 40547, Aug. 5, 1996, unless otherwise noted.

1852.101 Using FAR part 52. (NASA supplements paragraphs (b) and (e))

(b)(2)(i)(B) NASA contracting offices prescribing or developing clauses shall ensure that the requirements of subpart 1801.3 are met.

(e)(1) The NFS matrix in subpart 1852.3 is formatted similarly to that in the FAR. The first page of the NFS matrix contains a key to column headings, a dollar threshold chart, and requirement symbols. To fully determine the applicability of a provision or clause in the ''required-when-applicable'' and ''optional'' categories, Contracting Officers shall refer to the NFS text (cited in the matrix) that prescribes its use.

(4) The NFS matrix may be reproduced by field installations for the purpose of supplementing it with installation-developed provisions and clauses.

1852.103 Identification of provisions and clauses. (NASA supplements paragraphs (b) and (c))

(b) Provisions and clauses prescribed by a field installation to satisfy its needs shall be identified as stated in paragraphs (b) (i) and (ii) of this section. Articles, formats, and similar language shall be treated as provisions and clauses for purposes of this section 1852.103.

(i) A provision or clause shall be numbered using a prefix, a base, and a suffix. The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, DFRC, GSFC, CW, JSC, KSC, LARC, LERC, MSFC, SSC, or SSPO). The base shall be a numeric value beginning with ''52.2,'' with the next two digits corresponding to the number of the FAR or NFS subject part to which the provision or clause relates. The suffix shall be a hyphen and sequential number assigned within each part. NASA installations shall use suffix numbers from −90 to −199. For example, the first Johnson Space Center (JSC) provision or clause relating to part 36 of the FAR or NFS shall be JSC 52.236–90, the second JSC 52.236–91, and so forth. Provisions and clauses shall be dated in accordance with FAR 52.101(f).

(ii) Contracting officers shall identify provisions and clauses as in the following examples:

(A) I.2 BID ENVELOPES (GSFC 52.214–90) (AUGUST 1987) This example is applicable when identifying the title of provisions and clauses in solicitations and contracts using the uniform contract format (UCF). The first number (''I.2'') designates the UCF section and the sequential clause within that section ''GSFC 52.214–90'' specifies the clause number.

(B) GSFC 52.214–90—Bid Envelopes (AUGUST 1987) This example is applicable in all instances in which the provision or clause citation is not associated with the UCF number.

(C) Contracting officers shall not number provisions and clauses developed for individual acquisitions only. For example, ''F.3 Delivery Procedures for Special Hardware'' cites the third clause in Section F of a contract using the UCF, but has no clause number or date identified with it, indicating that the clause was developed for the particular contract it appears in.

1852.103–70 Identification of modified provisions and clauses.

When a FAR clause or provision is included in a solicitation or contract and the NFS prescribes a modification, the title line shall identify the modification as shown in this subsection. This format shall be used both for incorporation by reference and when using full text.

''52.232–28 Electronic Funds Transfer Payment Methods (APR 1989)—as modified by NASA FAR Supplement 1832.908(a)''

1852.104 Procedures for modifying and completing provisions and clauses.

NFS provisions and clauses shall not be modified unless authorized by the NFS. When authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1852.2—Texts of Provisions and Clauses

1852.204–75 Security classification requirements.

As prescribed in 1804.404–70, insert the following clause:

SECURITY CLASSIFICATION REQUIREMENTS
(SEP 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of _____ [insert the applicable security clearance level]. See Federal Acquisition Regulation clause 52.204–2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment _____ [Insert the attachment number of the DD Form 254].

(End of clause)

[61 FR 40548, Aug. 5, 1996]

1852.204–76 Security requirements for unclassified automated information resources.

As prescribed in 1804.470–4, insert the following clause:

SECURITY REQUIREMENTS FOR UNCLASSIFIED AUTOMATED INFORMATION RESOURCES (SEP 1993)

(a) In addition to complying with any functional and technical security requirements set forth in the schedule and the clauses of this contract, the Contractor shall initiate personnel screening checks and obtain user responsibility agreements, as required by this clause, for each contractor employee requiring unescorted or unsupervised physical access or electronic access to the following limited or controlled areas, systems, programs and data: [List areas, systems, programs and data].

(1) The Contractor shall submit a personnel security questionnaire (NASA Form 531, Name Check Request, for National Agency Check (NAC) investigations and Standard Form 85P, Questionnaire for Public Trust Positions, for specified sensitive positions) and a Fingerprint Card (FD–258 with NASA overprint in Origin Block) to the installation Security Officer for each Contractor employee who requires access. The required forms may be obtained from the installation security office. Employees may have fingerprints taken at the [Insert office name and location], or at any police department.

(i) Several months may be required for completion of complex personnel screening investigations. Background screening may not be required for employees with recent or current Federal Government investigations.

(ii) When employee access is necessary prior to completion of personnel screening, each contractor employee requiring access may be considered for escorted access. The installation Security Officer will establish the eligibility of proposed escorts.

(2) The Contractor shall ensure that each contractor employee requiring access executes any user responsibility agreements required by the Government prior to access. The Contractor shall provide signed copies of the agreements to the installation Security Officer for inclusion in the employee's security file. Unauthorized access is a violation of law and punishable under the provisions of 18 U.S.C. 1029, 18 U.S.C. 1030 and other applicable statutes.

(3) The Contractor shall notify the installation AIS Manager no later than the end of the day of the termination for cause of an authorized employee's access. The Contractor shall notify the COTR no later than ten days after an authorized employee no longer requires access for any other type of termination. Verbal notifications shall be confirmed in writing within thirty days.

(b) The Contractor shall incorporate this clause in all subcontracts where the requirements identified in paragraph (a) are applicable to performance of the subcontract.

(End of clause)

[61 FR 40548, Aug. 5, 1996, as amended at 62 FR 36733, July 9, 1997]

1852.208–81 Restrictions on Printing and Duplicating.

As prescribed in 1801.870, insert the following clause:

RESTRICTIONS ON PRINTING AND DUPLICATING (AUG 1993)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101–9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term ''printing'' includes the processes of composition, platemaking, presswork, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) ''Duplicating/copying'' is not considered to be printing. It is material produced by duplicating equipment employing the lithographic process and automatic copy-processing or copier-duplicating machines employing electrostatic, thermal, or other copying processes not requiring the use of negatives or metal plates. The Contractor is authorized to duplicate production unites provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such plates may not exceed a maximum image size of 10¾ by 14¼ inches. A ''production unit'' is one sheet, size 8½ × 11 inches (215 × 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing or duplicating/copying in excess of the limits set forth above are unallowable without prior written approval of the Contracting Officer. If the contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or

substantial duplicating/copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations and NFS 1808.802.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing and/or any duplicating/copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[61 FR 40548, Aug. 5, 1996]

1852.209–70 Product removal from Qualified Products List.

As prescribed in 1809.206–71, insert the following clause:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST (DEC 1988)

If, during the performance of this contract, the product being furnished is removed from the Qualified Products List for any reason, the Government may terminate the contract for Default pursuant to the default clause of the contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209–71 Limitation of Future Contracting.

As prescribed in 1809.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with FAR 9.507–2:

LIMITATION OF FUTURE CONTRACTING (DEC 1988)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [describe the conflict].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements or work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime of first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to complete with those other companies.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.209–72 Composition of the Contractor.

As prescribed in 1809.670, insert the following clause:

COMPOSITION OF THE CONTRACTOR (DEC 1988)

If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract.

(End of clause)

[61 FR 40549, Aug. 5, 1996]

1852.210–70 Brand name or equal.

As prescribed in 1810.011–70(a), insert the following provision:

BRAND NAME OR EQUAL (DEC 1988)

(a) As used in this provision, ''brand name'' means identification of products by make and model. The term ''bid'' means ''offer'' if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a ''brand name or equal'' description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering ''equal'' products, including products of the brand name manufacturer other than the one described by brand name, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an ''equal'' product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d)(1) If the offeror proposes to furnish an ''equal'' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) Caution to Offerors: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed-bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991]

1852.211–70 Brand name or equal.

As prescribed in 1811.104–71, insert the following provision:

BRAND NAME OR EQUAL (DEC 1988)

(a) As used in this provision, ''brand name'' means identification of products by make and model. The term ''bid'' means ''offer'' if this is a negotiated acquisition.

(b) If items called for by this solicitation are identified in the Schedule by a ''brand name or equal'' description, that identification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering ''equal'' products, including products of the brand name manufacturer other than the one described by model designation, will be considered for award if the products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the solicitation.

(c) Unless the offeror clearly indicates in the bid that it is offering an ''equal'' product, the bid shall be considered as offering a brand-name product referenced in the solicitation.

(d) (1) If the offeror proposes to furnish an ''equal'' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or that product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as on other information reasonably available to the contracting activity.

(2) CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information not identified in the bid and reasonably available to the contracting office. Accordingly, to ensure that sufficient information is available, the offeror must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the solicitation and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(3) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the bid a clear description of the proposed modifications and (ii) clearly mark any descriptive material to show them.

(4) If this is a sealed bid acquisition, modifications proposed after bid opening to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of provision)

[61 FR 47081, Sept. 6, 1996]

1852.212–70 Notice of delay.

As prescribed at 1812.104–70(a), insert the following clause:

NOTICE OF DELAY (DEC 1988)

If, because of technical difficulties, the Contractor becomes unable to complete the contract work at the time specified, notwithstanding the exercise of good faith and diligent efforts in performing the work called for under this contract, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons for it. The notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than 45 days before the completion date specified in this contract, unless otherwise permitted by the Contracting Officer. When notice is given, the Contracting Officer may extend the time specified in the Schedule for such period as is deemed advisable.

(End of clause)

1852.212–74 Period of Performance.

As prescribed in 1812.104–70(e), insert the following clause:

PERIOD OF PERFORMANCE (DEC 1988)

The period of performance of this contract shall be [Insert period of performance dates].

(End of clause)

1852.214–70 Caution to Offerors Furnishing Descriptive Literature.

As prescribed in 1814.201–670(a), insert the following provision:

CAUTION TO OFFERORS FURNISHING

Descriptive Literature

(Dec 1988)

Bidders are cautioned against furnishing as a part of their bids descriptive literature that includes language reserving to the bidder the right to deviate from the requirements of the invitation for bids. Statements that ''Data are subject to change without notice,'' ''Prices subject to change without notice,'' or words having a similar effect are examples of such reservation. The Government will reject as nonresponsive any bid that incorporates literature containing such language or any bid that must be evaluated by using literature containing such language. Bidders should clearly label any submissions of descriptive literature not intended to form a part of a bid as such in order to preclude any need for the Government to interpret the bidder's intent in submitting descriptive literature. [See FAR 14.202–5.]

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214–71 Grouping for Aggregate Award.

As prescribed in 1814.201–670(c), insert the following provision:

GROUPING FOR AGGREGATE AWARD

(MAR 1989)

(a) The Government will evaluate offers and make award on a basis of the aggregate offers for items

[Insert the item numbers and/or descriptions].

The Government will not consider an offer for quantities less than those specified for these items.

(b) If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on the total quantities for all of the items specified in paragraph (a) of this section.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.214–72 Full quantities.

As prescribed in 1814.201–670(b), insert the following provision:

FULL QUANTITIES (DEC 1988)

The Government will not consider an offer for quantities of items less than those specified. If this is an invitation for bids, the Government will reject as nonresponsive a bid that is not made on full quantities.

(End of provision)

[61 FR 47082, Sept. 6, 1996]

1852.215–73 Late submissions, modifications, and withdrawals of proposals (AO, SBIR, and STTR programs).

As prescribed in 1815.407–70(a), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (AO, SBIR, AND STTR PROGRAMS)

(OCTOBER 1996)

(a) The Government reserves the right to consider proposals or modifications, including any revision of an otherwise successful proposal, received after the date indicated for receipt of proposals if it would be in the Government's best interest to do so.

(b) Proposals may be withdrawn by written notice of telegram (Including mailgram) received at any time before award. Proposals maybe withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

[62 FR 3482, Jan. 23, 1997]

1852.215–74 Alternate proposals.

As prescribed in 1815.407–70(b), insert the following provision:

ALTERNATE PROPOSALS

(OCTOBER 1996)

(A) The offeror may submit an alternate proposal to accomplish any aspect of the effort or product contemplated by the solicitation in a manner that might create a beneficial improvement to the Government. The Government will consider an alternate proposal if it is accompanied by a basic proposal prepared in accordance with instructions contained in this solicitation. The alternate proposal must be complete by itself and comply with the proposal instructions of this solicitation. The alternate proposal will be evaluated in accordance with the evaluation factors of this solicitation.

(b) In the event the Government receives an alternate proposal that, it accepted, would result in a contract with terms varying in one or more material respects from those contained in this solicitation, and the Government concludes that implementation of the approach contained in the alternate proposal would be in its best interest, the Government may modify its solicitation in a manner appropriate the incorporate the changes but not reveal the substance of the alternate proposal, and thereafter give all offerors (and others if the facts warrant) an opportunity to respond to the modified solicitation.

(End of provision)

[62 FR 3482, Jan. 23, 1997]

1852.215–75 Expenses related to offeror submissions.

As prescribed in 1815.407–70(c), insert the following provision:

EXPENSES RELATED TO OFFEROR SUBMISSIONS

(DECEMBER 1988)

This solicitation neither commits the Government to pay any cost incurred in the submission of the offer or in making necessary studies or designs for preparing the offer, nor to contract for services or supplies. Any costs incurred in anticipation of a contract shall be at the offeror's own risk.

(End of provision)

[62 FR 3483, Jan. 23, 1997]

1852.215–77 Preproposal/pre-bid conference.

As prescribed in 1815.407–70(d), insert the following provision:

PREPROPOSAL/PRE-BID CONFERENCE

(DECEMBER 1988)

(a) A preproposal/pre-bid conference will be held as indicated below:

Date:

Time:

Location:

Other Information, as applicable:

[Insert the applicable conference information.]

(b) Attendance at the preproposal/pre-bid conference is recommended; however, attendance is neither required nor a prerequisite for proposal/bid submission and will not be considered in the evaluation.

(End of provision)

[62 FR 3483, Jan. 23, 1997]

1852.215–78 Make or buy program requirements.

As prescribed in 1815.708–70(a), insert the following provision:

MAKE OR BUY PROGRAM REQUIREMENTS

(DECEMBER 1988)

The offeror shall submit a Make-or-Buy Program in accordance with the requirements of Federal Acquisition Regulation (FAR) 15.705. The offeror shall include the following supporting documentation with its proposal:

(a) A description of each major item or work effort (see FAR 15.704).

(b) Categorization of each major item or work effort as ''must make,'' ''must buy,'' or ''can either make or buy.''

(c) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or ''buy.''

(d) Reasons for (i) categorizing items and work effort as ''must make'' or ''must buy'' and (ii) proposing to ''make'' or ''buy'' those categorized as ''can either make or buy.'' The reasons must include the consideration

given to the applicable evaluation factors described in the solicitation and be in sufficient detail to permit the Contracting Officer to evaluate the categorization and proposal.

(e) Designation of the offeror's plant or division proposed to make each item or perform each work effort and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(f) Identification of proposed subcontractors, if known, and their location and size status.

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(End of provision)

[62 FR 3483, Jan. 23, 1997]

1852.215–79 Price adjustment for "Make- or-Buy" changes.

As prescribed in 1815.708–70(b), insert the following clause:

PRICE ADJUSTMENT FOR ''MAKE-OR-BUY'' CHANGES

(December 1988)

The following make-or-buy items are subject to the provisions of paragraph (d) of the clause at FAR 52.215–21, Change or Additions to Make-or-Buy Program, of this contract:

Item Description	Make-or-Buy Determination

(End of clause)

[62 FR 3483, Jan. 23, 1997]

1852.215–81 Proposal page limitations.

As prescribed in 1815.407–70(g), insert the following provision:

PROPOSAL PAGE LIMITATIONS

(JANUARY 1994)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposed Section (List each volume or section)	Page Limit (Specify limit)
_____	_____
_____	_____
_____	_____
_____	_____

(b) A page is defined as one side of sheet, 8½'' x 11'', with at least one inch margins on all sides, using not smaller than 12 characters per inch (or equivalent) type. Foldouts count as an equivalent number of 8½'' x 11'' pages. The metric standard format most closely approximating the described standard 8½'' x 11'' size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If Best and Final Offers (BAFOs) are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

[62 FR 3483, Jan. 23, 1997]

1852.215–82 Offeror oral presentations.

As prescribed in 1815.407–70(h), insert the following provision:

OFFEROR ORAL PRESENTATIONS

(NOVEMBER 1993)

(a) Offerors are invited to give an oral presentation to the Government on the structure and general content of their proposals. These presentations are intended to assist Government evaluation by providing a ''roadmap'' to understanding proposals, i.e., an overview of the proposal organization and layout, and where required information and elements are located. Although the offeror's basic approach to satisfying solicitation requirements may be explained, it is to be done so only in general terms and only to expedite the Government's formal evaluation.

(b) The Government will not engage in any discussions during the oral presentation, and no proposal revisions will be accepted as part of the presentation. The Government's evaluation of offeror proposals will be based on the contents of the initial proposal, and any information not included in the initial proposal that is provided at the oral presentation will not be evaluated.

(c) Offerors should indicate in their proposals if they wish to give an oral presentation. These presentations are not mandatory, and electing not to give a presentation will not, in itself, affect proposal evaluation.

(d) Because the presentations are intended to assist the Government's evaluation, they will be scheduled to take place prior to commencement of the formal initial evaluation, normally within three days after proposal receipt. Offerors unable to accommodate this schedule forfeit their opportunity to provide a presentation.

(e) The presentations will consist of an offeror briefing not to exceed [*insert 1 or 2*] hours to be followed by a question and answer period. The order of offeror presentations will be determined at random. The exact time and place of the presentation, along with any other guidance, will be provided to the offeror by the contracting officer or his/her representative.

(f) Presentation materials are not required, but if used, the Government will retain one copy in its official file as a historical record of the presentation even though these materials will not be used in the Government's evaluation process.

(End of provision)

[62 FR 3483, Jan. 23, 1997]

1852.215–84 Ombudsman.

As prescribed in 1815.7003, insert the following clause:

OMBUDSMAN

(OCTOBER 1996)

An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution. If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, [Insert name], at _____ [Insert telephone number]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Deputy Administrator for Procurement, at 202–358–2090. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–73 Estimated cost and cost sharing.

As prescribed in 1816.307–70(a), insert the following clause:

ESTIMATED COST AND COST SHARING

(DECEMBER 1991)

(a) It is estimated that the total cost of performing the work under this contract will be $_____.

(b) For performance of the work under this contract, the Contractor shall be reimbursed for not more than _____ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining _____ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the _____ [insert ''Limitation of Cost'' or ''Limitation of Funds''] clause, the total estimated cost to the Government is hereby established as $_____ (insert estimated Government share); this amount is the maximum Government liability.

(d) The Contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the Contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–74 Estimated cost and fixed fee.

As prescribed in 1816.307–70(b), insert the following clause:

ESTIMATED COST AND FIXED FEE

(DECEMBER 1991)

The estimated cost of this contract is _____ exclusive of the fixed fee of _____. The total estimated cost and fixed fee is _____.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–75 Payment of fixed fee.

As prescribed in 1816.307–70(c), insert the following clause:

PAYMENT OF FIXED FEE

(DECEMBER 1988)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

(End of clause)

[62 FR 3484, Jan. 23, 1997]

1852.216–76 Award Fee for service contracts.

As prescribed in 1816.406–70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS

(OCTOBER 1996)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with *[identify performance evaluation plan].* The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The *[insert payment office]* will make payment based on *[Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].*

(d) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve is set aside in an amount that the Contracting Office considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts].* Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

ALTERNATE I

(OCTOBER 1996)

As prescribed in 1816.405–70(a), insert the following paragraph (f) and reletter existing paragraph (f) to (g):

(f)(1) Pending a determination of the amount of award fee earned for an evaluation period, a portion of the available award fee for that period will be paid to the contractor on a *[Insert the frequency of provisional payments (not more often than monthly)]* basis. The portion paid will be _____ *[Insert percentage (not to exceed 80 percent)]* percent of the current period's available amount or the equivalent of the prior period's interim fee, whichever is lower; provided, however, that when the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(2) In the event the amount of award fee earned, as determined by the FDO, is less than the sum of the provisional payments made for that period, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) Provisional award fee payments will *[insert ''not'' if appropriate]* be made prior to the first award fee determination by the Government.

(End of clause)

[62 FR 3484, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–77 Award fee for end item contracts.

As prescribed in 1816.406–70(b), insert the following clause:

AWARD FEE FOR END ITEM CONTRACTS

(INSERT MONTH OF PUBLICATION)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is ''poor/unsatisfactory.''

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with *[identify performance evaluation plan]* to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in *[Insert ''monthly'', or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.*

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocation to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will *[insert ''not'' if applicable]* be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a *[insert the frequency of provisional payments (not more often than monthly)]* basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see *[insert applicable cite]*). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is ''poor/unsatisfactory,'' the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance). This determination is not subject to the Disputes clause.

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is ''poor/unsatisfactory'', any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the *[insert payment office]* based on *[Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].*

(d) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[62 FR 3485, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–78 Firm fixed price.

As prescribed in 1816.202–70, insert the following clause:

FIRM FIXED PRICE

(DECEMBER 1988)

The total firm fixed price of this contract is $ [Insert the appropriate amount].

(End of clause)

[62 FR 3485, Jan. 23, 1997]

1852.216–80 Task ordering procedure.

As prescribed in 1816.506–70, insert the following clause:

TASK ORDERING PROCEDURES

(OCTOBER 1996)

(a) Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following date:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's proposal.

(c) Within ____ calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgement of receipt to the Contracting Officer within ____ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting officer may amend tasks in the same manner in which they are issued.

(h) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail.

(End of clause)

ALTERNATE I

(OCTOBER 1996)

As prescribed in 1816.506–70, insert the following paragraph (i) if the contract does not include 533M reporting:

(i) Contractor shall submit monthly task order progress reports. As a minimum, the reports shall contain the following information:

(1) Contract number, task order number, and date of the order.

(2) Task ceiling price.

(3) Cost and hours incurred to date for each issued task.

(4) Costs and hours estimated to complete each issued task.

(5) Significant issues/problems associated with a task.

(6) Cost summary of the status of all tasks issued under the contract.

[62 FR 3485, Jan. 23, 1997]

1852.216–81 Estimated cost.

As prescribed in 1816.307–70(d), insert the following clause:

ESTIMATED COST

(DECEMBER 1988)

The total estimated cost for complete performance of this contract is $ [Insert total estimated cost of the contract]. See FAR clause 52.216–11, Cost Contract—No Fee, of this contract.

(End of clause)

[62 FR 3486, Jan. 23, 1997]

1852.216–83 Fixed price incentive.

As prescribed in 1816.406–70(c), insert the following clause:

FIXED PRICE INCENTIVE

(OCTOBER 1996)

The target cost of this contract is $_____. The Target profit of this contract is $_____. The target price (target cost plus target profit) of this contract is $_____. [The ceiling price is $_____.]

The cost sharing for target cost underruns is: Government _____percent; Contractor _____percent.

The cost sharing for target cost overruns is: Government _____percent; Contractor _____percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–84 Estimated cost and incentive fee.

As prescribed in 1816.406–70(d), insert the following clause:

ESTIMATED COST AND INCENTIVE FEE

(OCTOBER 1996)

The target cost of this contract is $_____. The target fee of this contract is $_____. The total target cost and target fee as contemplated by the Incentive Fee clause of this contract are $_____.

The maximum fee is $_____.

The minimum fee is $_____.

The cost sharing for cost underruns is: Government _____percent; Contractor _____percent.

The cost sharing for cost overruns is: Government _____percent; Contractor _____percent.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–85 Estimated cost and award fee.

As prescribed in 1816.406–70(e), insert the following clause:

ESTIMATED COST AND AWARD FEE

(SEPTEMBER 1993)

The estimated cost of this contract is $_____. The maximum available award fee, excluding base fee, if any, is $_____. The base fee is $_____. Total estimated cost, base fee, and maximum award fee are $_____.

(End of clause)

Alternate I

(September 1993)

As prescribed in 1816.405–70(e), insert the following sentence at the end of the clause:

The maximum positive performance incentive is $_____. The maximum negative performance incentive is (1).

(1) For research development hardware contracts, insert [equal to total earned award fee (including any base fee)]. For production hardware contracts, insert [$*total potential award fee amount, including any base fee)].*

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–87 Submission of vouchers for payment.

As prescribed in 1816.307–70(e), insert the following clause:

SUBMISSION OF VOUCHERS FOR PAYMENT

(DECEMBER 1988)

(a) Public vouchers for payment of costs shall include a reference to this contract [Insert the contract *number*] and be forwarded to:

[Insert the mailing address for submission of cost vouchers.]

This is the designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract.

(b) The Contractor shall prepare vouchers as follows:

(1) One original Standard Form (SF) 1034, SF 1035, or equivalent Contractor's attachment.

(2) Seven copies of SF 1034A, SF 1035A, or equivalent Contractor's attachment.

(3) The Contractor shall mark SF 1034A copies 1, 2, 3, 4, and such other copies as may be directed by the Contracting Officer by insertion in the memorandum block the names and addresses as follows:

(i) Copy 1 NASA Contracting Officer;

(ii) Copy 2 Auditor;

(iii) Copy 3 Contractor;

(iv) Copy 4 Contract administration office; and

(v) Copy 5 Project management office.

(c) Public vouchers for payment of fee shall be prepared similarly and be forwarded to:

[Insert the mailing address for submission of fee vouchers.]

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(d) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

[62 FR 3486, Jan. 23, 1997]

1852.216–88 Performance incentive.

As prescribed in 1816.406–70(f), insert the following clause:

PERFORMANCE INCENTIVE

(JANUARY 1997)

(a) A performance incentive applies to the following hardware item(s) delivered under this contract: (1).

The performance incentive will measure the performance of those items against the salient hardware performance requirement, called ''unit(s) of measurement,'' e.g., months in service or amount of data transmitted, identified below. The performance incentive becomes effective when the hardware is put into service. It includes a standard performance level, a positive incentive, and a negative incentive, which are described in this clause.

(b) Standard performance level. At the standard performance level, the Contractor has met the contract requirement for the unit of measurement. Neither positive nor negative incentives apply when this level is achieved but not exceeded. The standard performance level for (1) ____ is established as follows: (2).

(c) Positive incentive. The Contractor earns a separate positive incentive amount for each hardware item listed in paragraph (a) of this clause when the standard performance level for that item is exceeded. The amount earned for each item varies with the units of measurement achieved, up to a maximum positive performance incentive amount of $ (3) ____ per item. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (4).

(d) Negative incentive. The Contractor will pay to the Government a negative incentive amount for each hardware item that fails to achieve the standard performance level. The amount to be paid for each item varies with the units of measurement achieved, up to the maximum negative incentive amount of $ (5) ____. The units of measurement and the incentive amounts associated with achieving each unit are shown below: (6).

(e) The final calculation of positive or negative performance incentive amounts shall be done when performance (as defined by the unit of measurement) ceases or when the maximum positive incentive is reached.

(1) When the Contracting Officer determines that the performance level achieved fell below the standard performance level, the Contractor will either pay the amount due the Government or credit the next payment voucher for the amount due, as directed by the Contracting Officer.

(2) When the performance level exceeds the standard level, the Contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases or the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(f) If performance cannot be demonstrated, through no fault of the Contractor, within *[insert number of months or years]* after the date of hardware acceptance by the Government, the Contractor will be paid *[insert percentage]* of the maximum performance incentive.

(g) The decisions made as to the amount(s) of positive or negative incentives are subject to the Disputes clause.

(1) Insert applicable item number(s) and/or nomenclature.

(2) Insert a specific unit of measurement for each hardware item listed in (1) and each salient characteristic, if more than one.

(3) Insert the maximum positive performance incentive amount (see 1816.402–270(e) (1) and (2)).

(4) Insert all units of measurement and associated dollar amounts up to the maximum performance incentive.

(5) Insert the appropriate amount in accordance with 1816.402–270(e).

(6) Insert all units of measurement and associated dollar amounts up to the maximum negative performance incentive.

(End of clause)

[62 FR 3486, Jan. 23, 1997, as amended at 62 FR 36733, July 9, 1997]

1852.216–89 Assignment and release forms.

As prescribed in 1816.307–70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS

(JUL 1997)

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216–7, Allowable Cost and Payment, and FAR clause 52.216–13, Allowable Cost and Payment (Facilities):

NASA Form 778, Contractor's Release;

NASA Form 779, Assignee's Release;

NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253–1, Computer Generated Forms.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.217–70 Property administration and reporting.

As prescribed in 1817.7002–4 insert the following clause:

PROPERTY ADMINISTRATION AND REPORTING (DEC 1988)

All property acquired for, and reimbursed by, NASA or transferred by NASA for use under this NASA-Defense Purchase Request shall be controlled and accounted for in accordance with the Military Department's normal procedures. All excess items, however, costing $500 or more and in condition Code 7 or better (GSA Condition Codes) shall be reported to the NASA originating office for possible reutilization before disposition.

(End of clause)

1852.219–73 Small, small disadvantaged, and women-owned small business subcontracting plan.

As prescribed in 1819.708–70(a), insert the following provision:

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN

(JUL 1997)

(a) This provision is not applicable to small business concerns.

(b) The contract expected to result from this solicitation will contain FAR clause 52.219–9, ''Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.'' The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.219–74 Use of Rural Area Small Businesses.

As prescribed in 1819.7103, insert the following clause:

USE OF RURAL AREA SMALL BUSINESS (SEPT 1990)

(a) Definitions.

Rural area means any county with a population of fewer than twenty thousand individuals.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this contract, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

(b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.

(d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

(End of clause)

[55 FR 47479, Nov. 14, 1990]

1852.219–75 Small, Small disadvantaged, and women-owned small business subcontracting reporting.

As prescribed in 1819.708–70(b), insert the following clause:

SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING REPORTING

(JUL 1997)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.

(b) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219–9.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.219–76 NASA 8 percent goal.

As prescribed in 1819.7003 insert the following clause:

NASA 8 PERCENT GOAL

(JUL 1997)

(a) Definitions.

Historically Black Colleges or University, as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institutions, as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)) which for the purposes of this

clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

Small disadvantaged business concern, as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

Women-owned small business concern, as used in this clause, means a small business concern (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.

(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of clause)

[62 FR 36733, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.219–77 NASA Mentor-Protégé program.

As prescribed in 1819.7219(a), insert the following clause:

NASA MENTOR-PROTÉGÉ PROGRAM

(JUL 1997)

(a) Prime contractors, including certain small businesses, are encouraged to participate in the NASA pilot Mentor-Protégé Program for the purpose of providing developmental assistance to eligible protégé entities to enhance their capabilities and increase their participation in NASA contracts.

(b) The pilot Program consists of:

(1) Mentor firms, which are large prime contractors with at least one active subcontracting plan or eligible small businesses;

(2) Protégés, which are subcontractors to the prime contractor, include small disadvantaged business concerns, women-owned small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(3) Mentor-protégé agreements, approved by the NASA Office of Small and Disadvantaged Business Utilization (OSDBU);

(4) Potential for payment of additional award fee for voluntary participation and successful performance in the Mentor-Protégé Program.

(c) Mentor participation in the Program, described in NFS 1819.72, means providing technical, managerial and financial assistance to aid protégés in developing requisite high-tech expertise and business systems to compete for and successfully perform NASA contracts and subcontracts.

(d) Contractors interested in participating in the pilot program are encouraged to contact the NASA OSDBU, Washington, DC 20546, (202) 358–2088, for further information.

(End of clause)

[62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.219–79 Mentor requirements and evaluation.

As prescribed in 1819.7219(b), insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION

(JUL 1997)

(a) The purpose of the NASA Mentor-Protégé Program is for a NASA prime contractor to provide developmental assistance to certain subcontractors qualifying as

protégés. Eligible protégés include small disadvantaged business concerns, women-owned small business concerns, Historically Black Colleges and Universities, and minority institutions meeting the qualifications specified in NASA FAR Supplement (NFS) 1819.7209.

(b) NASA will evaluate the contractor's performance through the Performance Evaluation process. The evaluation will consider the following:

(1) Specific actions taken by the contractor, during the evaluation period, to increase the participation of protégés as subcontractors and suppliers;

(2) Specific actions taken by the contractor during this evaluation period to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the protégé has met the developmental objectives in the agreement; and

(4) To what extent the firm's participation in the Mentor-Protégé Program resulted in the protégé receiving competitive contract(s) and subcontract(s) from private firms and agencies other than the mentor.

(c) Semi-annual reports shall be submitted by the mentor to the NASA Mentor-Protégé program manager, NASA Headquarters OSDBU, to include information as outlined in paragraph (b).

(d) The mentor will notify the OSDBU and the contracting officer, in writing, as least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program or upon receipt of a protégé's notice to withdraw from the Program;

(e) Mentor and protégé firms will submit a ''lessons learned'' evaluation to the NASA OSDBU at the conclusion of the pilot Program period or the conclusion of their effort whichever comes first. At the conclusion of each year in the Mentor-Protégé Program, the mentor and protégé, as appropriate, will formally brief the NASA Mentor-Protégé program manager, the technical program manager, and the contracting officer during a formal program review regarding Program accomplishments as pertains to the approved agreement.

(f) NASA may terminate mentor-protégé agreements and exclude mentor or protégé firms from participating in the NASA program if NASA determines that such actions are in NASA's interest. These actions shall be approved by the NASA OSDBU. NASA shall terminate an agreement by delivering to the contractor a Notice specifying the reason for termination and the effective date. Termination of an agreement does not constitute a termination of the subcontract between the mentor and the protégé. A plan for accomplishing the subcontract effort should the agreement be terminated shall be submitted with the agreement as required in NFS 1819.7213(h).

(End of clause)

[62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.223–70 Safety and Health.

As prescribed in 1823.7004(c), insert the following clause:

SAFETY AND HEALTH (MAR 1997)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.

(b) The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of $25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work-related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(d) (1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall

promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (d)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that (1) amount to $1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required), (2) require construction, repair, or alteration in excess of the simplified acquisition threshold, or (3) regardless of dollar amount, involve the use of hazardous materials or operations.

(f) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.

(g) As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:

(1) Written hazardous operating procedures for all hazardous operations.

(2) Qualification standards for personnel involved in hazardous operations.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991; 58 FR 51142, Sept. 30, 1993; 61 FR 5315, Feb. 12, 1996; 62 FR 14033, Mar. 25, 1997]

1852.223–71 Frequency authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DEC 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223–73 Safety and health plan.

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN (DEC 1988)

The offeror shall submit a detailed safety and health plan, as part of the offeror's proposal, showing how the Contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

ALTERNATE I (DEC 1988)

As prescribed by 1823.7001(d), delete the first sentence of the basic provision and substitute the following:

The apparently successful offeror shall submit a detailed safety and health plan after notification of selection but before contract award, showing how the contractor intends to protect the life, health, and well being of NASA and contractor employees as well as property and equipment.

[54 FR 28340, July 5, 1989, as amended at 57 FR 40856, Sept. 8, 1992; 61 FR 55758. Oct. 29, 1996; 62 FR 14033, Mar. 25, 1997]

1852.223–74 Drug- and alcohol-free workforce.

As prescribed in 1823.570–3, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE (MAR 1996)

(a) *Definitions.* As used in this clause the terms ''employee,'' ''controlled substance,'' ''employee in a sensitive position,'' and ''use,

in violation of applicable law or Federal regulation, of alcohol'' are as defined in 48 CFR 1823.570–2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug- and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'' published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, ''Procedures for Transportation Workplace Drug Testing Programs,'' in which references to ''DOT'' shall be read as ''NASA'', and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

[61 FR 7226, Feb. 27, 1996]

1852.225–71 Nondomestic construction materials.

As prescribed in 1825.207–70, insert the following clause:

NONDOMESTIC CONSTRUCTION MATERIALS (DEC 1988)

The requirements of the Buy American Act—Construction Materials clause do not apply to the following construction materials or components: [List articles of materials and supplies.]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997]

1852.225–72 [Reserved]

1852.225–73 Duty-free entry supplies.

As prescribed in 1825.605–70, insert the following clause:

DUTY-FREE ENTRY SUPPLIES (DEC 1988)

In accordance with the Duty-Free Entry clause of this contract, the following supplies will be given duty-free entry:

[Insert the supplies that are to be accorded duty-free entry.]

(End of clause)

1852.227–11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 1827.303–70(a), modify the clause at FAR 52.227–11 by adding the following subparagraph (5) to paragraph (f) of the basic clause. In addition, use the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(5) The contractor shall provide the contracting officer the following:

(i) A listing every 12 months (or such longer period as the contracting officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

(End of addition)

(2) The contractor shall include the clause in the NASA FAR Supplement at 1852.227–70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

(End of substitution)

[55 FR 27089, June 29, 1990, as amended at 62 FR 36734, July 9, 1997]

1852.227–14 Rights in Data—General.

As prescribed in 1827.409(a), add the following subparagraph (3) to paragraph (d) of the basic clause at FAR 52.227–14:

(3)(i) The Contractor agrees not to establish claims to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word ''establish'' is used in this clause, with reference to a claim to copyright, it shall be construed to mean ''assert''.

(End of addition)

[55 FR 27089, June 29, 1990, as amended at 60 FR 47312, Sept. 12, 1995; 62 FR 36734, July 9, 1997]

1852.227–17 Rights in Data—Special Works.

As prescribed in 1827.409(i), add the following paragraph (f) to the basic clause at FAR 52.227–17:

(f) Whenever the words ''establish'' and ''establishment'' are used in this clause, with reference to a claim to copyright, they shall be construed to mean ''assert'' and ''assertion'', respectively.

(End of addition)

[60 FR 47312, Sept. 12, 1995. Redesignated at 61 FR 5315, Feb. 12, 1996, as amended at 62 FR 36734, July 9, 1997]

1852.227–19 Commercial Computer Software—Restricted Rights.

(a) As prescribed in 1827.409(k)(i), add the following paragraph (e) to the basic clause at FAR 52.227–19:

(e) For the purposes of receiving updates, correction notices, consultation information, or other similar information regarding any computer software delivered under this contract/purchase order, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any vendor supplied agreements, registration forms, or cards and return them directly to the vendor; however, such signing shall not alter any of the rights or obligations of either NASA or the vendor set forth

in this clause or elsewhere in this contract/purchase order.

(End of addition)

(b) As prescribed in 1827.409(k)(ii), add the following paragraph (f) to the basic clause at FAR 52.227–19:

(f) Subject to paragraphs (a) through (e) above, those applicable portions of the Contractor's standard commercial license or lease agreement pertaining to any computer software delivered under this purchase order/contract that are consistent with Federal laws, standard industry practices, and the Federal Acquisition Regulation (FAR) shall be incorporated into and made part of this purchase order/contract.

(End of addition)

[55 FR 27090, June 29, 1990, as amended at 55 FR 47480, Nov. 14, 1990; 55 FR 53153, Dec. 27, 1990; 62 FR 36734, July 9, 1997]

1852.227–70 New technology.

As prescribed in 1827.303–70(b), insert the following clause:

NEW TECHNOLOGY (JULY 1995)

(a) *Definitions.*

Administrator, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

Contract, as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

Made, as used in this clause, means conception or first actual reduction to practice; *provided,* that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

Nonprofit organization, as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Reportable item, as used in this clause, means any invention, discovery, improvement, or innovation of the Contractor, whether or not the same is or may be patentable or otherwise protectible under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

Small business firm, as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3–8 for small business contractors and in 13 CFR 121.3–12 for small business subcontractors will be used.)

Subject invention, as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or may be protectible under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(b) *Allocation of principal rights*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called ''the Act''), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption

of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) *Minimum rights reserved by the Government.* (1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph (c) shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel

responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to section 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions. (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the

amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall—

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227–11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of paragraph (h)(1)(i) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 53631, Dec. 29, 1989; 60 FR 40521, Aug. 9, 1995; 62 FR 36734, July 9, 1997]

1852.227–71 Requests for waiver of rights to inventions.

As prescribed in 1827.30–70(c), insert the following provision in all solicitations that include the clause at 1852.227–70, New Technology:

REQUESTS FOR WAIVER OF RIGHTS TO INVENTIONS (APR 1984)

(a) In accordance with the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, waiver of rights to any or all inventions made or that may be made under a NASA contract or subcontract with other than a small business firm or a domestic nonprofit organization may be requested at different time periods. Advance waiver of rights to any or all inventions that may be made under a contract or subcontract may be requested prior to the execution of the contract or subcontract, or within 30 days after execution by the selected contractor. In addition, waiver of rights to an identified invention made and reported under a contract or subcontract may be requested, even though a request for an advance waiver was not made or, if made, was not granted.

(b) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, the countries, and a citation of the specific section or sections of the regulations under which such rights are requested; and the

name, address, and telephone number of the party with whom to communicate when the request is acted upon. Requests for advance waiver of rights should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) Petitions for advance waiver, prior to contract execution, must be submitted to the Contracting Officer. All other petitions will be submitted to the Patent Representative designated in the contract.

(d) Petitions submitted with proposals selected for negotiation of a contract will be forwarded by the Contracting Officer to the installation Patent Counsel for processing and then to the Inventions and Contributions Board. The Board will consider these petitions and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Contracting Officer of the Administrator's determination. The Contracting Officer will be informed by the Board whenever there is insufficient time or information or other reasons to permit a decision to be made without unduly delaying the execution of the contract. In the latter event, the petitioner will be so notified by the Contracting Officer. All other petitions will be processed by installation Patent Counsel and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the Regulations.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997]

1852.227–72 Designation of new technology representative and patent representative.

As prescribed in 1827.303–70(d), insert the following clause:

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (JUL 1997)

(a) For purposes of administration of the clause of this contract entitled ''New Technology'' or ''Patent Rights—Retention by the Contractor (Short Form),'' whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office code	Address (including zip code)
	New Technology Representative Patent Representative	

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a ''New Technology'' clause or ''Patent Rights—Retention by the Contractor (Short Form)'' clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305–370 of the NASA FAR Supplement.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36734, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.227–84 Patent Rights Clauses.

The contracting officer shall insert the following provision as prescribed in 1827.303–70(e):

PATENT RIGHTS CLAUSES (DEC 1989)

This solicitation contains the patent rights clauses of FAR 52.227–11 (as modified by the NFS) and NFS 1852.227–70. If the contract resulting from this solicitation is awarded to a small business or nonprofit organization, the clause at NFS 1852.227–70 shall not apply. If the award is to other than a small business or nonprofit organization, the clause at FAR 52.227–11 shall not apply.

(End of Provision)

[54 FR 53631, Dec. 29, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227–85 Invention reporting and rights—foreign.

As prescribed in 1827.303–70(f), insert the following clause:

INVENTION REPORTING AND RIGHTS—FOREIGN (APR 1986)

(a) As used in this clause, the term ''invention'' means any invention, discovery or improvement, and ''made'' means the conception or first actual demonstration that the invention is useful and operable.

(b) The Contractor shall report promptly to the Contracting Officer each invention made in the performance of work under this contract. The report of each such invention shall:

(1) Identify the inventor(s) by full name; and

(2) Include such full and complete technical information concerning the invention as is necessary to enable an understanding of the nature and operation thereof.

(c) The Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration the full right, title and interest in and to each such invention throughout the world, except for the State in which this contract is to be performed. As to such State, Contractor hereby grants to the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration only an irrevocable, nontransferable, nonexclusive, royalty-free license to practice each such invention by or on behalf of the United States of America or any foreign government pursuant to any treaty or agreement with the United States of America, provided that Contractor within a reasonable time files a patent application in that State for each such invention. Where Contractor does not elect to file such patent application for any such invention in that State, full right, title and interest in and to such invention in that State shall reside in the Government of the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(d) The Contractor agrees to execute or to secure the execution of such legal instruments as may be necessary to confirm and to protect the rights granted by paragraph (c) of this clause, including papers incident to the filing and prosecution of patent applications.

(e) Upon completion of the contract work, and prior to final payment, Contractor shall submit to the Contracting Officer a final report listing all inventions reportable under this contract or certifying that no such inventions have been made.

(f) In each subcontract, the Contractor awards under this contract where the performance of research, experimental design, engineering, or developmental work is contemplated, the Contractor shall include this clause and the name and address of the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 36735, July 9, 1997]

1852.227–86 Commercial computer software—licensing.

As prescribed in 1827.409–70, insert the following clause:

COMMERCIAL COMPUTER SOFTWARE—LICENSING (DEC 1987)

(a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) of this clause. Where the vendor/contractor proposes its standard commercial software license, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the restricted rights in paragraph (d) of this clause, are incorporated into and made a part of this purchase order/contract.

(b) Although the vendor/contractor may not propose its standard commercial software license until after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this purchase order/contract under the same terms and conditions as in paragraph (a) of this clause. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, the NASA Contracting Officer or the NASA Contracting Officer's Technical Representative/User may sign any agreement, license, or registration form or card and return it directly to the vendor/contractor; however, such signing shall not alter any of the terms and conditions of this clause.

(c) The vendor's/contractor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor/contractor has unconditionally accepted the terms and conditions set forth in this clause, and that such terms and conditions (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following restricted rights shall apply:

(1) The commercial computer software may not be used, reproduced, or disclosed by the Government except as provided below or

otherwise expressly stated in the purchase order/contract.

(2) The commercial computer software may be—

(i) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraph (a) or (b) of this clause;

(ii) Reproduced for safekeeping (archives) or backup purposes;

(iii) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(iv) Disclosed and reproduced for use by Government contractors or their subcontractors in accordance with the restricted rights in paragraphs (d)(2) (i), (ii), and (iii) of this clause; provided they have the Government's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.

(3) If the incorporated vendor's/contractor's software license contains provisions or rights that are less restrictive than the restricted rights in paragraph (d)(2) of this clause, then the less restrictive provisions or rights shall prevail.

(4) If the computer software is published, copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the rights in paragraphs (d)(2) and (3) of this clause.

(5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in paragraphs (d) (2), (3), and (4) of this clause.

End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 62 FR 36735, July 9, 1997]

1852.227–87 Transfer of Technical Data Under Space Station International Agreements.

As prescribed at 1827.670–2, insert the following clause:

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENT (APR 1989)

1. In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.

2. The Contractor agrees, when specifically directed in writing by the Contracting Officer, or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the Contracting Officer or designated representative.

3. It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph 2 of this clause, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.

4. Nothing contained in this clause affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the Rights in Data clause of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that clause.

5. The Contractor agrees to include this clause, including this paragraph 5, in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

(End of clause)

[54 FR 39375, Sept. 26, 1989]

1852.228–70 Aircraft ground and flight risk.

As prescribed in 1828.370(a), insert the following clause. The purpose of this clause is to have the Government assume risks that generally entail unusually high insurance premiums and are not covered by the contractor's contents, work-in-process, and similar insurance. Since the definitions in the clause may not cover every situation that should be covered to achieve this purpose, the clause may be modified as

follows: If the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft, the definition of ''aircraft'' should be modified to specify that the aircraft has reached a point of manufacture comparable to that specified in the standard definition, which is written for conventional winged aircraft. The definition of ''in the open'' may be modified to include ''hush houses,'' test hangars, comparable structures, and other designated areas. In addition, clause paragraph (d)(3) may be modified to provide for Government assumption of risk of transportation by conveyance on streets or highways if the contracting officer determines that this transportation is limited to the vicinity of the contractor's premises and is merely incident to work being performed under the contract.

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(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction.

(b) For the purposes of this clause, the following definitions apply:

(1) Unless otherwise specifically provided in the Schedule, ''aircraft'' includes—

(i) Aircraft (including both complete aircraft and aircraft in the course of being manufactured, disassembled, or reassembled; provided that an engine, wing, or a portion of a wing is attached to the fuselage) to be furnished to the Government under this contract (whether before or after Government acceptance); and

(ii) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract, including all property installed in, being installed in, or temporarily removed from them, unless the aircraft and property are covered by a separate bailment agreement.

(2) ''In the open'' means located wholly outside of buildings on the Contractor's premises, or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government are considered to be in the open at all times while in the Contractor's possession, care, custody, or control.

(3) ''Flight'' includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) With respect to seaplanes, flight commences with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises; provided, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by the Contracting Officer in writing.

(4) ''Contractor's premises'' means those premises designated as such in the Schedule or in writing by the Contracting Officer, and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(5) ''Operation'' means operations and tests, other than on any production line, of aircraft not in flight, whether or not the aircraft is in the open or in motion. It includes operations and tests of equipment, accessories, and power plants only when installed in aircraft.

(6) ''Flight crew members'' means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when requirement or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(7) ''Contractor's managerial personnel'' means the Contractor's directors, officers, and any managers, superintendents, or equivalent representatives who have supervision or direction of all or substantially all

of the Contractor's business or of the Contractor's operations at any one plant, a separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract.

(c)(1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to paragraph (c)(3) of this clause. If the Contracting Officer finds that an aircraft is in the open under unreasonable conditions, the Contracting Officer shall notify the Contractor in writing of the conditions found to be unreasonable and require the Contractor to correct them within a reasonable time.

(2) Upon receipt of this notice, the Contractor shall act promptly to correct these conditions, regardless of whether it agrees that they are in fact unreasonable. To the extent that the Contracting Officer may later determine that they were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs incurred in correcting them, and the contract shall be modified in writing accordingly.

(3)(i) If the Contracting Officer finds that the Contractor has failed to act promptly to correct unreasonable conditions or has failed to correct them within a reasonable time, the Contracting Officer may by written notice terminate the Government's assumption of risk under this clause for any aircraft which is in the open under those conditions. This termination shall be effective at 12:01 A.M. on the 15th day following the day of receipt by the Contractor of the notice.

(ii) If the Contracting Officer later determines that the Contractor acted promptly to correct the conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made to compensate the Contractor for any additional costs incurred as a result of the termination, and the contract shall be modified in writing accordingly.

(4) If the Government's assumption of risk under this clause is terminated in accordance with paragraph (c)(3) of this clause, the risk of loss with respect to Government-furnished property shall be determined in accordance with the Government property clause of this contract, if any, until the Government's assumption of risk is reinstated in accordance with paragraph (c)(5) of this clause.

(5)(i) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government. The Government may or may not elect to reassume the risks and relieve the Contractor of liabilities as provided in this clause, and the Contracting Officer shall notify the Contractor of the Government's election.

(ii) If, after correction of the conditions, the Government elects to reassume the risks and relieve the Contractor of liabilities, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending from the end of the third working day after the Contractor notifies the Government of the correction until the Government notifies the Contractor of that election.

(iii) If the Government elects not to reassume the risks and the conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for any costs of insurance extending after the third working day referred to in paragraph (c)(5)(ii) of this clause.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of aircraft—

(1) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for protecting and preserving aircraft in the open and during operation, in accordance with sound industrial practice;

(2) Sustained during flight if the flight crew members conducting the flight have not been approved in writing by the Contracting Officer;

(3) While in the course of transportation by rail or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) The extent that the damage, loss, or destruction is in fact covered by insurance;

(5) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless this damage is the result of other loss, damage, or destruction covered by this clause (except that, in the case of Government-furnished property, if the damage consists of reasonable wear and tear or deterioration or results from an inherent defect in such property, this exclusion shall not apply); or

(6) Sustained while the aircraft is being worked upon and directly resulting from the work, including but not limited to any repairing, adjusting, servicing, or maintenance operation, unless the damage, loss, or destruction is of a type that would be covered by insurance that would customarily have been maintained by the Contractor at the time of the damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e)(1) With the exception of damage to, or loss or destruction of, aircraft in flight, the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each separately occurring event. The Contractor assumes the risk of and shall be responsible for

the first $1,000 of loss of or damage to aircraft in the open or during operation resulting from each separately occurring event, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor under this paragraph (e). If the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) No subcontractor may be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the Contracting Officer's prior written approval, provides for relief of the subcontractor from that liability. In the absence of such approval, the subcontract shall require the return of the aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. If a subcontractor has not been relieved from liability and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for that damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as this clause may otherwise authorize, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h)(1) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, separate damaged and undamaged aircraft, and put all aircraft in the best possible order. Further, except in cases covered by paragraph (e) of this clause, the Contractor should furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) Any insurance covering any part of the interest in the commingled property.

(2) Except in cases covered by paragraph (e) of this clause, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing its obligations under this paragraph (h), and this contract shall be modified in writing accordingly.

(i)(1) If, before delivery and acceptance by the Government, any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of that damage, loss, or destruction, the Government shall either

(i) Require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage or

(ii) Terminate this contract with respect to that aircraft.

(2) If the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and the contract shall be modified in writing accordingly.

(3) If this contract is terminated under this paragraph (i)(1)(ii) with respect to the aircraft, and under this clause the Government has assumed the risk of the damage, loss, or destruction, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amounts the Contracting Officer determines (i) that it would have cost the Contractor to complete the aircraft (or any work to be performed on it), together with any anticipated profit on the uncompleted work and (ii) to be the value, if any, of the damaged aircraft or any remaining portion of it retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft or any remaining parts of it, and, if the Contractor incurs additional costs as a result of such disposition, a further equitable adjustment shall be made in the amount due to the Contractor.

(j)(1) If the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under this clause and for which the Contractor has been compensated by the Government, it shall equitably reimburse the Government.

(2) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suits and the execution of instruments of assignment or

subrogation in favor of the Government) in obtaining recovery.

[61 FR 55772, Oct. 29, 1996]

1852.228–71 Aircraft flight risks.

(a) As prescribed in 1828.311–2, insert the following clause:

AIRCRAFT FLIGHT RISKS (DEC 1988)

(a) Notwithstanding any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance—Liability to Third Persons clause), the Contractor shall not: (1) Be relieved of liability for damage to, or loss or destruction of, aircraft sustained during flight or (2) be reimbursed for liabilities to third persons for loss of or damage to property or for death or bodily injury caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause—

(1) Unless otherwise specifically provided in the Schedule, ''aircraft'' includes any aircraft, whether furnished by the Contractor under this contract (either before or after Government acceptance) or furnished by the Government to the Contractor under this contract, including all Government property placed or installed or attached to the aircraft, unless the aircraft and property are covered by a separate bailment agreement.

(2) ''Flight'' includes any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) With respect to land-based aircraft, flight commences with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.

(ii) With respect to seaplanes, flight commences with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.

(iii) With respect to helicopters, flight commences upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.

(iv) With respect to vertical take-off aircraft, flight commences upon disengagement from any launching platform or device and continues until the aircraft has been re-engaged to any launching platform or device.

(3) ''Flight crew members'' means the pilot, copilot, and, unless otherwise specifically provided in the Schedule, the flight engineer and navigator when required or assigned to their respective crew positions to conduct any flight on behalf of the Contractor.

(c) (1) If any aircraft is damaged, lost, or destroyed during flight and the amount of the damage, loss, or destruction exceeds $100,000 or 20 percent of the estimated cost, exclusive of any fee, of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction under the Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause of this contract or under paragraph (a) of this clause, an equitable adjustment for any resulting repair, restoration, or replacement required under this contract shall be made: (i) In the estimated cost, the delivery schedule, or both and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly.

(2) In determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction shall be taken into consideration.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 61 FR 55774, Oct. 29, 1996]

1852.228–72 Cross-Waiver of liability for space shuttle services.

As prescribed in 1828.371 (b) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES (SEPT 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to Contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Contractors* and *Subcontractors* include suppliers of any kind.

(2) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) *Party* means a person or entity that signs an agreement involving a Space Shuttle service;

(4) *Payload* means all property to be flown or used on or in the Space Shuttle; and

(5) *Protected Space Operations* means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this contract. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraph (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. This waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in (c)(1)(i) and (c)(1)(ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protection Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between the Government's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

[59 FR 65730, Dec. 21, 1994]

1852.228–73 Bid Bond.

As prescribed in 1828.101–70, insert the following provision:

BID BOND (OCT 1988)

(a) Each bidder shall submit with its bid a bid bond (Standard Form 24) with good and sufficient surety or sureties acceptable to the Government, or other security as provided in Federal Acquisition Regulation clause 52.228–1, in the amount of twenty percent (20%) of the bid price, or $3 million, whichever is the lower amount.

(b) Bid bonds shall be dated the same date as the bid or earlier.

(End of provision)

1852.228–75 Minimum insurance coverage.

As prescribed in 1828.372, insert the following clause:

MINIMUM INSURANCE COVERAGE (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under

those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least $100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least $500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury liability and $20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

''The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy.''

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger liability, and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

1852.228–76 Cross-Waiver of liability for space station activities.

As prescribed in 1828.371(d) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES (DEC 1994)

(a) The Intergovernmental Agreement for the Space Station contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this clause is to extend this cross-waiver requirement to Contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(2) *Launch Vehicle* means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(3) *Partner State* means each contracting party for which the ''Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station'' (the ''Intergovernmental Agreement'') has entered into force, in accordance with Article 25 of the Intergovermental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA) and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified to the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.

(4) *Payload* means all property to be flown or used on or in a launch vehicle or the Space Station.

(5) *Protected Space Operations* means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of the Intergovernmental Agreement or performed under this contract. ''Protected Space Operations'' also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles,

payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A Partner State's Contractors or subcontractors at any tier;

(ii) A Partner State's users or customers at any tier; or

(iii) A Contractor or subcontractor of a Partner States's user or customer at any tier.

(7) *Contractors* and *Subcontractors* include suppliers of any kind.

(c) (1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:

(i) Any Partner State other than the United States;

(ii) A related entity of any Partner State other than the United States; and

(iii) The employee of any of the entities identified in paragraphs (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(End of clause)

[59 FR 65730, Dec. 21, 1994]

1852.228–78 Cross-Waiver of liability for NASA expendable launch vehicle launches.

As prescribed in 1828.371 (c) and (e), insert the following clause:

CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES (SEPT 1993)

(a) As prescribed by regulation (14 CFR part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. The purpose of this clause is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) *Contractors* and *Subcontractors* include suppliers of any kind.

(2) *Damage* means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) *Party* means a person or entity that signs an agreement involving an ELV launch;

(4) *Payload* means all property to be flown or used on or in the ELV; and

(5) *Protected Space Operations* means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the contract. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for

ELV-related activities necessary to implement an agreement involving an ELV launch or to perform this contract. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) *Related entity* means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; and

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the persons, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government; and

(iii) The employees of any of the entities identified in (c)(1) (i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

(5) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

(End of clause)

[59 FR 56731, Dec. 21, 1994]

1852.231–70 Precontract costs.

As prescribed in 1831.205–70, insert the following clause:

PRECONTRACT COSTS

(JUNE 1995)

The contractor shall be entitled to reimbursement for costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[60 FR 29505, June 5, 1995]

1852.231–71 Determination of compensation reasonableness.

As prescribed at 1831.205–671, insert the following provision.

DETERMINATION OF COMPENSATION REASONABLENESS (MARCH 1994)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compsensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222–46, ''Evaluation of Compensation for Professional Employees.''

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used or those Service Contract Act employees proposed that do not fail within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of $500,000 and (2) the cumulative value of all their service subcontracts under the proposed prime contract in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in (a) through (c) of this provision.

(End of provision)

[62 FR 4474, Jan. 30, 1997]

1852.232–77 Limitation of funds (fixed-price contract).

As prescribed in 1832.705–270(a), insert the following clause. Contracting officers are authorized, in appropriate cases, to revise clause paragraphs (a), (b), and (g) to specify the work required under the contract, in lieu of using contract item numbers. The 60-day period may be varied from 30 to 90 days, and the 75 percent from 75 to 85 percent:

LIMITATION OF FUNDS (FIXED-PRICE CONTRACT) (MAR 1989)

(a) Of the total price of items ___ through ___, the sum of $___ is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract in accordance with the following schedule, until the total price of said items is allotted:

SCHEDULE FOR ALLOTMENT OF FUNDS

Date Amounts

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until ___.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimated date when the point referred to in paragraph (c)(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c)(3)(ii) of this clause, additional funds are not allotted by the date specified in paragraph (c)(1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment

shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a). This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of clause)

1852.232–79 Payment for on-site preparatory costs

As prescribed in 1832.111–70, insert the following clause:

PAYMENT FOR ON-SITE PREPARATORY COSTS (SEPT 1987)

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.232–81 Contract funding.

As prescribed in 1832.705–270(b), insert the following clause:

CONTRACT FUNDING (JUN 1990)

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is $_____. This allotment is for [Insert applicable item number(s), task(s), or work description] _____ and covers the following estimated period of performance: _____.

(b) An additional amount of $ _____ is obligated under this contract for payment of fee.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 57 FR 40856, Sept. 8, 1992]

1852.232–82 Submission of requests for progress payments.

As prescribed in 1832.502–470, insert the following clause:

SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS (MAR 1989)

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.233–70 Protests to NASA.

As prescribed in 1833.106–70, insert the following provision:

PROTESTS TO NASA (MARCH 1997)

Potential bidders or offerors may submit a protest under 48 CFR part 33 (FAR Part 33) directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a protest, a potential bidder or offeror may submit the protest to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Deputy Associate Administrator for Procurement, NASA Code H, Washington, DC 20546–0001.

[62 FR 11108, Mar. 11, 1997]

1852.234–70 Phased acquisiton using down-selection procedures.

As prescribed in 1834.7004(a), insert the following clause in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique. Phase identifications should be modified as appropriate:

PHASED PROCUREMENT USING DOWN-SELECTION PROCEDURES (NOV 1993)

(a) This solicitation is for the acquisition of _____ [Insert Program titles]. This system is a major system as defined by Office of

Management and Budget Circular A–109 and NASA Management Instruction (NMI) 7120.4. The acquisition will be conducted as two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive down-selection.

(b) Phase B is for the _____ [Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will _____ [insert general phase C/D goals].

(c) The competition for Phase C/D will be based on the results of Phase B, and the award criteria for C/D will include successful completion of Phase B requirements.

(d) NASA will issue a separate, formal solicitation for Phase C/D, and all information required for preparation of Phase C/D proposals, including the final evaluation factors, will be provided at that time.

(e) Phase C/D will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase B contractors will be capable of successfully competing for Phase C/D, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase C/D synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: _____ (Insert the specific Phase B deliverables). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase C/D evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase C/D proposals are solicited.

[Insert draft Phase C/D evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase B requirements.]

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase B award—
Phase C/D synopsis—
Phase C/D proposal requested—
Phase C/D proposal receipt—
Phase C/D award—

(End of clause)

[58 FR 58794, Nov. 4, 1993, as amended at 59 FR 10080, Mar. 3, 1994; 62 FR 4474, Jan. 30, 1997]

1852.234–71 Phased acquisition using progressive competition down-selection procedures.

As prescribed in 1834.7004(b), insert the following clause in solicitations and contracts for phased acquisitions using progressive competition down-selection procedures. Phase identifications should be modified as appropriate.

Phased Procurement Using Progressive Competitive Down-Selection Procedures (Nov 1993)

(a) This solicitation is for the acquisition of _____ [Insert Program title]. This system is a major system as defined by Office of Management and Budget Circular A–109 and NASA Management Instruction (NMI) 7120.4. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive down-selection.

(b) Phase B is for the _____ [Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will _____ [insert general phase C/D goals].

(c) The competition for Phase C/D will be based on the results of Phase B, and the award criteria for C/D will include successful completion of Phase B requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase C/D. Instead, Phase C/D proposals will be requested from the Phase B contractors by means of

_____ [Indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase C/D proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase C/D will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase B contractors will be capable of successfully competing for Phase C/D, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase C/D synopsis, and NASA will provide that source all the material furnished to the Phase B contractors that is necessary to submit a proposal.

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: _____ (Insert the specific Phase B deliverables). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase C/D evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase C/D proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase C/D.

[Insert draft Phase C/D evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase B requirements.]

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase B award—
Phase C/D synopsis—
Phase C/D proposal requested—
Phase C/D proposal receipt—
Phase C/D award—

(End of clause)

[58 FR 58794, Nov. 4, 1993, as amended at 59 FR 10080, Mar. 3, 1994; 62 FR 4474, Jan. 30, 1997]

1852.235–70 Center for AeroSpace Information.

As prescribed in 1827.409(i) and 1835.070(a), insert the following clause:

CENTER FOR AEROSPACE INFORMATION (NOV 1992)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) When the contract otherwise requires the submission of monthly progress, quarterly progress, or final reports, as defined at 1827.406(b), the last page of such reports shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Accessioning Department, 800 Elkridge Landing Road, Linthicum Heights, MD 21090–2934.

(End of clause)

[57 FR 58725, Dec. 11, 1992]

1852.235–71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

KEY PERSONNEL AND FACILITIES (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting

Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; *provided,* that the Contracting Officer may ratify in writing the proposed change, and that ratification shall constitute the Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

[List here the personnel and/or facilities considered essential, unless they are specified in the contract Schedule.]

(End of clause)

1852.235–72 Instructions for responding to NASA Research Announcements.

As prescribed in 1835.070(c), insert the following provision:

INSTRUCTIONS FOR RESPONDING TO NASA RESEARCH ANNOUNCEMENTS (JANUARY 1997)

(a) General.

(1) Proposals received in response to a NASA Research Announcement (NRA) will be used only for evaluation purposes. NASA does not allow a proposal, the contents of which are not available without restriction from another source, or any unique ideas submitted in response to an NRA to be used as the basis of a solicitation or in negotiation with other organizations, nor is a pre-award synopsis published for individual proposals.

(2) A solicited proposal that results in a NASA award becomes part of the record of that transaction and may be available to the public on specific request; however, information or material that NASA and the awardee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law, including the Freedom of Information Act.

(3) NRAs contain programmatic information and certain requirements which apply only to proposals prepared in response to that particular announcement. These instructions contain the general proposal preparation information which applies to responses to all NRAs.

(4) A contract, grant, cooperative agreement, or other agreement may be used to accomplish an effort funded in response to an NRA. NASA will determine the appropriate instrument. Contracts resulting from NRAs are subject to the Federal Acquisition Regulation and the NASA FAR Supplement. Any resultant grants or cooperative agreements will be awarded and administered in accordance with the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1).

(5) NASA does not have mandatory forms or formats for responses to NRAs; however, it is requested that proposals conform to the guidelines in these instructions. NASA may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

(6) To be considered for award, a submission must, at a minimum, present a specific project within the areas delineated by the NRA; contain sufficient technical and cost information to permit a meaningful evaluation; be signed by an official authorized to legally bind the submitting organization; not merely offer to perform standard services or to just provide computer facilities or services; and not significantly duplicate a more specific current or pending NASA solicitation.

(b) NRA-Specific Items. Several proposal submission items appear in the NRA itself: the unique NRA identifier; when to submit proposals; where to send proposals; number of copies required; and sources for more information. Items included in these instructions may be supplemented by the NRA.

(c) The following information is needed to permit consideration in an objective manner. NRAs will generally specify topics for which additional information or greater detail is desirable. Each proposal copy shall contain all submitted material, including a copy of the transmittal letter if it contains substantive information.

(1) Transmittal Letter or Prefatory Material.

(i) The legal name and address of the organization and specific division or campus identification if part of a larger organization;

(ii) A brief, scientifically valid project title intelligible to a scientifically literate reader and suitable for use in the public press;

(iii) Type of organization: e.g., profit, nonprofit, educational, small business, minority, women-owned, etc;

(iv) Name and telephone number of the principal investigator and business personnel who may be contacted during evaluation or negotiation;

(v) Identification of other organizations that are currently evaluating a proposal for the same efforts;

(vi) Identification of the NRA, by number and title, to which the proposal is responding;

(vii) Dollar amount requested, desired starting date, and duration of project;

(viii) Date of submission; and

(ix) Signature of a responsible official or authorized representative of the organization, or any other person authorized to legally bind the organization (unless the signature appears on the proposal itself).

(2) Restriction on Use and Disclosure of Proposal Information. Information contained in proposals is used for evaluation purposes only. Offerors or quoters should, in order to maximize protection of trade secrets or other information that is confidential or privileged, place the following notice on the title page of the proposal and specify the information subject to the notice by inserting an appropriate identification in the notice. In any event, information contained in proposals will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

NOTICE—RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL INFORMATION

The information (data) contained in *[insert page numbers or other identification*] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract (or other agreement) is awarded on the basis of this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract (or other agreement). This restriction does not limit the Government's right to use or disclose this information (data0 if obtained from another source without restriction.

(3) Abstract. Include a concise (200–300 word if not otherwise specified in the NRA) abstract describing the objective and the method of approach.

(4) Project Description.

(i) The main body of the proposal shall be a detailed statement of the work to be undertaken and should include objectives and expected significance; relation to the present state of knowledge; and relation to previous work done on the project and to related work in progress elsewhere. The statement should outline the plan of work, including the broad design of experiments to be undertaken and a description of experimental methods and procedures. The project description should address the evaluation factors in these instructions and any specific factors in the NRA. Any substantial collaboration with individuals not referred to in the budget or use of consultants should be described. Subcontracting significant portions of a research project is discouraged.

(ii) When it is expected that the effort will require more than one year, the proposal should cover the complete project to the extent that it can be reasonably anticipated. Principal emphasis should be on the first year of work, and the description should distinguish clearly between the first year's work and work planned for subsequent years.

(5) Management Approach. For large or complex efforts involving interactions among numerous individuals or other organizations, plans for distribution of responsibilities and arrangements for ensuring a coordinated effort should be described.

(6) Personnel. The principal investigator is responsible for supervision of the work and participates in the conduct of the research regardless of whether or not compensated under the award. A short biographical sketch of the principal investigator, a list of principal publications and any exceptional qualifications should be included. Omit social security number and other personal items which do not merit consideration in evaluation of the proposal. Give similar biographical information on other senior professional personnel who will be directly associated with the project. Give the names and titles of any other scientists and technical personnel associated substantially with the project in an advisory capacity. Universities should list the approximate number of students or other assistants, together with information as to their level of academic attainment. Any special industry-university cooperative arrangements should be described.

(7) Facilities and Equipment.

(i) Describe available facilities and major items of equipment especially adapted or suited to the proposed project, and any additional major equipment that will be required. Identify any Government-owned facilities, industrial plant equipment, or special tooling that are proposed for use. Include evidence of its availability and the cognizant Government points of contact.

(ii) Before requesting a major item of capital equipment, the proposer should determine if sharing or loan of equipment already within the organization is a feasible alternative. Where such arrangements cannot be made, the proposal should so state. The need for items that typically can be used for research and non-research purposes should be explained.

(8) Proposed Costs

(i) Proposals should contain cost and technical parts in one volume: do not use separate ''confidential'' salary pages. As applicable, include separate cost estimates for salaries and wages; fringe benefits; equipment; expendable materials and supplies; services; domestic and foreign travel; ADP expenses; publication or page charges; consultants;

subcontracts; other miscellaneous identifiable direct costs; and indirect costs. List salaries and wages in appropriate organizational categories (e.g., principal investigator, other scientific and engineering professionals, graduate students, research assistants, and technicians and other non-professional personnel). Estimate all staffing data in terms of staff-months or fractions of full-time.

(ii) Explanatory notes should accompany the cost proposal to provide identification and estimated cost of major capital equipment items to be acquired; purpose and estimated number and lengths of trips planned; basis for indirect cost computation (including date of most recent negotiation and cognizant agency); and clarification of other items in the cost proposal that are not self-evident. List estimated expenses as yearly requirements by major work phases.

(iii) Allowable costs are governed by FAR Part 31 and the NASA FAR Supplement Part 1831 (and OMB Circulars A–21 for educational institutions and A–122 for nonprofit organizations).

(9) Security. Proposals should not contain security classified material. If the research requires access to or may generate security classified information, the submitter will be required to comply with Government security regulations.

(10) Current Support. For other current projects being conducted by the principal investigator, provide title of project, sponsoring agency, and ending date.

(11) Special Matters.

(i) Include any required statements of environmental impact of the research, human subject or animal care provisions, conflict of interest, or on such other topics as may be required by the nature of the effort and current statutes, executive orders, or other current Government-wide guidelines.

(ii) Proposers should include a brief description of the organization, its facilities, and previous work experience in the field of the proposal. Identify the cognizant Government audit agency, inspection agency, and administrative contracting officer, when applicable.

(d) Renewal Proposals.

(1) Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. A renewal proposal should not repeat all of the information that was in the original proposal. The renewal proposal should refer to its predecessor, update the parts that are no longer current, and indicate what elements of the research are expected to be covered during the period for which support is desired. A description of any significant findings since the most recent progress report should be included. The renewal proposal should treat, in reasonable detail, the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

(2) NASA may renew an effort either through amendment of an existing contract or by a new award.

(e) Length. Unless otherwise specified in the NRA, effort should be made to keep proposals as brief as possible, concentrating on substantive material. Few proposals need exceed 15–20 pages. Necessary detailed information, such as reprints, should be included as attachments. A complete set of attachments is necessary for each copy of the proposal. As proposals are not returned, avoid use of ''one-of-a-kind'' attachments.

(f) Joint Proposals.

(1) Where multiple organizations are involved, the proposal may be submitted by only one of them. It should clearly describe the role to be played by the other organizations and indicate the legal and managerial arrangements contemplated. In other instances, simultaneous submission of related proposals from each organization might be appropriate, in which case parallel awards would be made.

(2) Where a project of a cooperative nature with NASA is contemplated, describe the contributions expected from any participating NASA investigator and agency facilities or equipment which may be required. The proposal must be confined only to that which the proposing organization can commit itself. ''Joint'' proposals which specify the internal arrangements NASA will actually make are not acceptable as a means of establishing an agency commitment.

(g) Late Proposals. A proposal or modification received after the date or dates specified in an NRA may be considered if doing so is in the best interests of the Government.

(h) Withdrawal. Proposals may be withdrawn by the proposer at any time before award. Offerors are requested to notify NASA if the proposal is funded by another organization or of other changed circumstances which dictate termination of evaluation.

(i) Evaluation Factors

(1) Unless otherwise specified in the NRA, the principal elements (of approximately equal weight) considered in evaluating a proposal are its relevance to NASA's objectives, intrinsic merit, and cost.

(2) Evaluation of a proposal's relevance to NASA's objectives includes the consideration of the potential contribution of the effort to NASA's mission.

(3) Evaluation of its intrinsic merit includes the consideration of the following factors of equal importance:

(i) Overall scientific or technical merit of the proposal or unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(ii) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(iii) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical in achieving the proposal objectives.

(iv) Overall standing among similar proposals and/or evaluation against the state-of-the-art.

(4) Evaluation of the cost of a proposed effort may include the realism and reasonableness of the proposed cost and available funds.

(j) Evaluation Techniques. Selection decisions will be made following peer and/or scientific review of the proposals. Several evaluation techniques are regularly used within NASA. In all cases proposals are subject to scientific review by discipline specialists in the area of the proposal. Some proposals are reviewed entirely in-house, others are evaluated by a combination of in-house and selected external reviewers, while yet others are subject to the full external peer review technique (with due regard for conflict-of-interest and protection of proposal information), such as by mail or through assembled panels. The final decisions are made by a NASA selecting official. A proposal which is scientifically and programmatically meritorious, but not selected for award during its initial review, may be included in subsequent reviews unless the proposer requests otherwise.

(k) Selection for Award.

(1) When a proposal is not selected for award, the proposer will be notified. NASA will explain generally why the proposal was not selected. Proposers desiring additional information may contact the selecting official who will arrange a debriefing.

(2) When a proposal is selected for award, negotiation and award will be handled by the procurement office in the funding installation. The proposal is used as the basis for negotiation. The contracting officer may request certain business data and may forward a model award instrument and other information pertinent to negotiation.

(l) Cancellation of NRA. NASA reserves the right to make no awards under this NRA and to cancel this NRA. NASA assumes no liability for canceling the NRA or for anyone's failure to receive actual notice of cancellation.

[62 FR 4475, Jan. 30, 1997]

1852.236–71 Additive or deductive items.

As prescribed in 1836.570(a), insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (MAR 1989)

(a) The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in order of priority listed in the Schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed those funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added for each bid if award on it can be made within the funds.

(b) An example for one bid is an amount available of $100,000, a bidder's base bid of $85,000, and four successive additives of $10,000, $8,000, $6,000, and $4,000. In this example, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because either of them would cause the aggregate bid to exceed $100,000.

(c) All bids shall be evaluated on the basis of the same additive or deductive bid items. The listed order of priority must be followed only for determining the low bidder. After determination of the low bidder, award in the best interests of the Government may be made to that bidder on its base bid and any combination of its additive or deductive bid items for which funds are determined to be available at the time of the award, provided that award of the combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–72 Bids with unit prices.

As prescribed in 1836.570(b), insert the following provision:

BIDS WITH UNIT PRICES (MAR 1989)

(a) All extensions of the unit prices bid will be subject to verification by the Government. If there is variation between the unit price and any extended amounts, the unit price will be considered to be the bid.

(b) If a modification to a bid based on unit prices that provides for a lump-sum adjustment to the total estimated cost is submitted, the application of the lump sum adjustment to each unit price in the bid must be stated. If it is not stated, the lump-sum adjustment shall be applied on a pro rata basis to every unit price in the bid.

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–73 Hurricane plan.

As prescribed in 1836.570(c), insert the following clause:

HURRICANE PLAN (DEC 1988)

In the event of a hurricane warning, the Contractor shall—

(a) Inspect the area and place all materials possible in a protected location;

(b) Tie down, or identify and store, all outside equipment and materials;

(c) Clear all surrounding areas and roofs of buildings, or tie down loose material, equipment, debris, and any other objects that could otherwise be blown away or blown against existing buildings; and

(d) Ensure that temporary erosion controls are adequate.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.236–74 Magnitude of requirement.

As prescribed in 1836.570(d), insert the following provision:

MAGNITUDE OF REQUIREMENT (DEC 1988)

The Government estimated price range of this project is between $_____ and $_____. [Insert the estimated dollar range.]

(End of provision)

[54 FR 28340, July 5, 1989, as amended at 62 FR 4476, Jan. 30, 1997]

1852.237–70 Emergency evacuation procedures.

As prescribed at 1837.110–70(a), insert the following clause:

EMERGENCY EVACUATION PROCEDURES (DEC 1988)

The contractor shall assure that its personnel at Government facilities are familiar with the functions of the Government's emergency evacuation procedures. If requested by the Contracting Officer, the Contractor shall designate an individual or individuals as contact points to provide for efficient and rapid evacuation of the facility if and when required.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 54 FR 39376, Sept. 26, 1989; 62 FR 4476, Jan. 30, 1997]

1852.237–71 Pension portability.

As prescribed at 1837.110–70(b), insert the following clause:

PENSION PORTABILITY, JANUARY 1997

(a) In order for pension costs attributable to employees assigned to this contract to be allowable costs under this contract, the plans covering such employees must:

(1) Comply with all applicable Government laws and regulations;

(2) Be a defined contribution plan, or a multiparty defined benefit plan operated under a collective bargaining agreement. In either case, the plan must be portable, i.e., the plan follows the employee, not the employer;

(3) Provide for 100 percent employee vesting at the earlier of one year of continuous employee service or contract termination; and

(4) Not be modified, terminated, or a new plan adopted without the prior written approval of the cognizant NASA Contracting Officer.

(b) The Contractor shall include paragraph (a) of this clause in subcontracts for continuing services under a service contract if:

(1) The prime contract requires pension portability;

(2) The subcontracted labor dollars (excluding any burdens or profit/fee) exceed $2,500,000 and ten percent of the total prime contract labor dollars (excluding any burdens or profit/fee); and

(3) Either of the following conditions exists:

(i) There is a continuing need for the same or similar subcontract services for a minimum of five years (inclusive of options), and if the subcontractor changes, a high percentage of the predecessor subcontractor's employees are expected to remain with the program; or

(ii) The employees under a predecessor subcontract were covered by a portable pension plan, a follow-on subcontract or a subcontract consolidating existing services is awarded, and the total subcontract period covered by the plan covers a minimum of five years (including both the predecessor and successor subcontracts).

(End of clause)

[62 FR 4477, Jan. 30, 1997]

1852.237–72 Identification of uncompensated overtime.

As prescribed in 1837.110–70(c), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME, JANUARY 1997

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an officer's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation.

(a) Definitions. As used in this provision:

''Uncompensated overtime'' means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

''Effective hourly rate'' is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work seek basis at $20.00 per hour would be converted to an effective hourly rate of $17.78 per hour [($20.00×40) divided by 45=$17.78].

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

[62 FR 4477, Jan. 30, 1997]

§ 1852.239–70 Alternate Delivery Points.

As prescribed in 1839.106–70(a)(1), insert the following clause:

ALTERNATE DELIVERY POINTS (NOV 1993)

(a) The first priority of this contract is to satisfy the anticipated requirements of ___ (identify contracting activity). However, should the actual requirements of ___ (contracting activity) be less than the maximum quantities/values specified in section B of this contract, ___ (contracting activity) may order the remaining available quantities/values to satisfy the requirements of other installations. The other installations at which delivery may be required are:

(List installations and their locations)

(b) The prices of the deliverables in section B are F.O.B. destination to ___ (contracting activity). If delivery to an alternate location is ordered, an equitable adjustment may be negotiated to recognize any variances in transportation costs associated with delivery to that alternate location.

(End of clause)

ALTERNATE I (NOV 1993)

As prescribed in 1839.7008(b), delete paragraph (b) and substitute the following:

(b) The prices of the deliverables in section B are F.O.B. origin with delivery to NASA via Government bill of lading (GBL). If delivery to an alternate location is ordered, the same delivery procedures will be used and no equitable adjustment to any price, term, or condition of this contract will be made as a result of such order.

(End of clause)

[58 FR 59189, Nov. 8, 1993; 58 FR 62556, Nov. 29, 1993, as amended at 62 FR 4477, Jan. 30, 1997; 62 FR 36735, July 9, 1997]

1852.241–70 Renewal of contract.

As prescribed in 48 CFR 1841.501–70, insert the following clause:

RENEWAL OF CONTRACT (DEC 1988)

This contract is renewable on an annual basis at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor at least _____ days before expiration. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ years.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 12460, Mar. 26, 1991. Redesignated and amended at 60 FR 16063, Mar. 29, 1995; 62 FR 4477, Jan. 30, 1997]

1852.242–70 Technical direction.

As prescribed in 1842.271, insert the following clause:

TECHNICAL DIRECTION (SEPT 1993)

(a) Performance of the work under this contract is subject to the written technical direction of the Contracting Officer Technical Representative (COTR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement 1842.270. ''Technical direction'' means a directive to the Contractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Contractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instruction purporting to be technical direction that—

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clause;

(3) Constitutes a basis for any increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical direction shall be issued in writing by the COTR.

(d) The Contractor shall proceed promptly with the performance of technical direction duly issued by the COTR in the manner prescribed by this clause and within the COTR's authority. If, in the Contractor's opinion, any instruction or direction by the COTR falls within any of the categories defined in paragraph (b) of this clause, the Contractor shall not proceed but shall notify the Contracting Officer in writing within 5 working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within 30 days that the instruction or direction is—

(1) Rescinded in its entirety; or

(2) Within the requirements of the contract and does not constitute a change under the Changes clause of the contract, and that the Contractor should proceed promptly with its performance.

(e) A failure of the Contractor and the Contracting Officer to agree that the instruction or direction is both within the requirements of the contract and does not constitute a change under the Changes clause, or a failure to agree upon the contract action to be taken with respect to the instruction or direction, shall be subject to the Disputes clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the Contracting Officer or the COTR shall be at the Contractor's risk.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 56 FR 32119, July 15, 1991; 59 FR 21668, Apr. 26, 1994; 62 FR 36735, July 9, 1997]

1852.242–71 Travel outside of the United States.

As prescribed in 1842.7002, insert the following clause:

TRAVEL OUTSIDE OF THE UNITED STATES (DEC 1988)

(a) The Contracting Officer must authorize in advance and in writing travel to locations outside of the United States by Contractor employees that is to be charged as a cost to this contract. This approval may be granted when the travel is necessary to the efforts required under the contract and it is otherwise in the best interest of NASA.

(b) The Contractor shall submit requests to the Contracting Officer at least 30 days in advance of the start of the travel.

(c) The Contractor shall submit a travel report at the conclusion of the travel. The Contracting Officer's approval of the travel will specify the required contents and distribution of the travel report.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 29, 1990; 56 FR 12460, Mar. 26, 1991]

1852.242–72 Observance of Legal Holidays.

As prescribed in 1842.7001(a), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS (AUG 1992)

(a) The on-site Government personnel observe the following holidays:

New Year's Day
Labor Day
Martin Luther King, Jr.'s Birthday
Columbus Day
President's Birthday
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

ALTERNATE I (SEPT 1989)

As prescribed in 1842.7001(b), add the following paragraphs (c) and (d) as Alternate I to the clause.

(c) On-site personnel assigned to this contract shall not be granted access to the installation during the holidays in paragraph (a) of the clause, except as follows: the Contractor shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative. If the Contractor's on-site personnel work during a holiday other than those in paragraph (a) of the clause, no form of holiday or other premium compensation shall be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work that would have been overtime regardless of the status of the day as a holiday.

(d) The Contractor shall place identical requirements, including this paragraph, in all subcontracts that require performance of work on-site, unless otherwise instructed by the Contracting Officer.

ALTERNATE II (SEPT 1989)

As prescribed in 1842.7001(c), add the following paragraphs (e) and (f):

(e) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), Contractor personnel working on-site should also be dismissed. However, the contractor shall provide sufficient onsite personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by the Contracting Officer or authorized representative.

(f) Whenever administrative leave is granted to Contractor personnel pursuant to paragraph (e) of this clause, it shall 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 cost under this contract for employees in accordance with the Contractor's established accounting policy.

[54 FR 39376, Sept. 26, 1989, as amended at 57 FR 40856, Sept. 8, 1992; 62 FR 36735, July 9, 1997]

1852.242–73 NASA contractor financial management reporting.

As prescribed in 1842.7202, insert the following clause:

NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING

(JUL 1997)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Policy Guidance (NPG) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified

in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.243–70 Engineering change proposals.

As prescribed in 1843.205–70(a), insert the following clause, modified to suit contract type:

ENGINEERING CHANGE PROPOSALS (MAR 1997)

(a) Definitions.

ECP means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

MIL-STD–973 means a DOD publication entitled, Military Standard Configuration Control—Egnineering Changes, Deviations and Waivers, 15 July 1988.

(b) Either party to the contract may originate ECPs. The originator shall forward proposed ECPs to the Contracting Officer. Unless another process has been approved by the Government or specified by the Contracting Officer, the ECP formats, forms and controls specified in MIL-STD–973 shall be used. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

(c) Any ECP submitted to the Contracting Officer shall include a ''not-to-exceed'' _____ [price or estimated cost] increase or decrease adjustment amount, if any, and the required [time of delivery or period of performance] adjustment, if any, acceptable to the originator of the ECP. If the change is originated within the Government, the Contracting Officer shall obtain a written agreement with the Contractor regarding the ''not-to-exceed'' _____ [price or estimated cost] and [delivery or period of performance] adjustments, if any, prior to issuing an order for implementation of the change.

(d) After submission of a Contractor initiated ECP, the Contracting Officer may require the Contractor to submit the following information:

(1) Cost or pricing data in accordance with FAR 15.804–6 if the proposed change meets the criteria for its submission under FAR 15.804–2; or

(2) Information other than cost or pricing data adequate for Contracting Officer determination of price reasonableness or cost realism. The Contracting Officer reserves the right to request additional information if that provided by the Contractor is considered inadequate for that purpose. If the Contractor claims applicability of one of the exceptions to submission of cost or pricing data, it shall cite the exception and provide rationale for its applicability.

(e) If the ECP is initiated by NASA, the Contracting Officer shall specify the cost information requirements, if any.

(End of clause)

ALTERNATE I

(JUL 1997)

As prescribed in 1843.205–70(b), add the following paragraph (f), modified to suit contract type, to the basic clause:

(f) If the ____ [price or estimated cost] adjustment proposed for any contractor-originated ECP is ____ [insert a percent or dollar amount of the contract price or estimated cost] or less, the ECP shall be executed with no adjustment to the contract ____ [price or estimated cost].

ALTERNATE II (SEPT 1990)

As prescribed in 1843.205–70(c), add the following sentence at the end of paragraph (c) of the basic clause:

An ECP accepted in accordance with the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

[62 FR 14033, Mar. 25, 1997, as amended at 62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.243–71 Shared savings.

As prescribed in 1843.7102, insert the following clause:

SHARED SAVINGS (MAR 1997)

(a) The Contractor is entitled, under the provisions of this clause, to share in cost savings resulting from the implementation of cost reduction projects which are presented to the Government in the form of Cost Reduction Proposals (CRP) and approved by the Contracting Officer. These cost reduction projects may require changes to the terms, conditions or statement of work of this contract. Any cost reduction projects must not change the essential function of any products to be delivered or the essential purpose of services to be provided under the contract.

(b) Definitions:

(1) *Cost savings,* as contemplated by this clause mean savings that result from instituting changes to the covered contract, as identified in an approved Cost Reduction Proposal.

(2) *Cost Reduction Proposal*—For the purposes of this clause, a Cost Reduction Proposal means a proposal that recommends alternatives to the established procedures and/or organizational support of a contract or group of contracts. These alternatives must result in a net reduction of contract cost and price to NASA. The proposal will include technical and cost information sufficient to enable the Contracting Officer to evaluate the CRP and approve or disapprove it.

(3) *Covered contract*—As used in this provision, covered contract means the contract, including unexercised options but excluding future contracts, whether contemplated or not, against which the CRP is submitted.

(4) *Contractor implementation costs*—As used in this provision, Contractor implementation costs, or ''implementation costs'', shall mean those costs which the Contractor incurs on covered contracts specifically in developing, preparing, submitting, and negotiating a CRP, as well as those costs the Contractor will incur on covered contracts to make any structural or organizational changes in order to implement an approved CRP.

(5) *Government costs*—As used in this provision, the term Government costs means internal costs of NASA, or any other Government agency, which result directly from development and implementation of the CRP. These may include, but are not limited to, costs associated with the administration of the contract or with such contractually related functions such as testing, operations, maintenance and logistics support. These costs also include costs associated with other Agency contracts (including changes in contract price or cost and fee) that may be affected as a result of the implementation of a CRP. They do not include the normal administrative costs of reviewing and processing the Cost Reduction Proposal.

(c) General. The Contractor will develop, prepare and submit CRP's with supporting information as detailed in paragraph (e) of this clause, to the Contracting Officer. The CRP will describe the proposed cost reduction activity in sufficient detail to enable the Contracting Officer to evaluate it and to approve or disapprove it. The Contractor shall share in any net cost savings realized from approved and implemented CRPs in accordance with the terms of this clause. The Contractor's actual percentage share of the cost savings shall be a matter for negotiation with the Contracting Officer, but shall not, in any event, exceed 50 percent of the total cost savings recognized by the Contracting Officer. The Contractor may propose changes in other activities that impact performance on its contract, including Government and other Contractor operations, if such changes will optimize cost savings. A Contractor shall not be entitled to share, however, in any cost savings that are internal to the Government, or which result from changes made to any contracts to which it is not a party even if those changes were proposed as a part of its CRP. Early communication between the Contractor and Government is encouraged. The communication may be in the form of a concept paper or preliminary proposal. The Government is not committed to accepting any proposal as a result of these early discussions.

(d) Computation of cost savings. The cost savings to be shared between the Government and the Contractor will be computed by the Contracting Officer by comparing a current estimate to complete (ETC) for the covered contract, as structured before implementation of the proposed CRP, to a revised ETC which takes into account the implementation of that CRP. The cost savings to be shared shall be reduced by any cost overrun, whether experienced or projected, that is identified on the covered contract before implementation of the CRP. Although a CRP may result in cost savings that extend far into the future, the period in which the Contractor may share in those savings will be limited to no more than five years. Implementation costs of the Contractor must be considered and specifically identified in the revised ETC. The Contracting Officer shall offset Contractor cost savings by any increased costs (whether implementing or recurring) to the Government when computing the total cost savings to be shared. The Contractor shall not be entitled, under the provisions of this clause, to share in any cost reductions to the contract that are the result of changes stemming from any action other than an approved CRP. However, this clause does not limit recovery of any such reimbursements that are allowed as a result of other contract provisions.

(e) Supporting Information. As a minimum, the Contractor shall provide the following supporting information with each CRP:

(1) Identification of the current contract requirements or established procedures and/or organizational support which are proposed to be changed.

(2) A description of the difference between the current process or procedure and the proposed change. This description shall address how proposed changes will meet NASA requirements and discuss the advantages and disadvantages of the existing practice and the proposed changes.

(3) A list of contract requirements which must be revised, if any, if the CRP is approved, along with proposed revisions. Any changes to NASA or delegated contract management processes should also be addressed.

(4) Detailed cost estimates which reflect the implementation costs of the CRP.

(5) An updated ETC for the covered contract, unchanged, and a revised ETC for the covered contract which reflects changes resulting from implementing the CRP. If the CRP proposes changes to only a limited number of elements of the contract, the ETCs need only address those portions of the contract that have been impacted. Each ETC shall depict the level of costs incurred or to be incurred by year, or to the level of detail required by the Contracting Officer. If other CRPs have been proposed or approved on a contract, the impact of these CRPs must be addressed in the computation of the cost savings to ensure that the cost savings identified are attributable only to the CRP under consideration in the instant case.

(6) Identification of any other previous submissions of the CRP, including the dates submitted, the agencies and contracts involved, and the disposition of those submittals.

(f) Administration.

(1) The Contractor shall submit proposed CRPs to the Contracting Officer who shall be responsible for the review, evaluation and approval. Normally, CRP's should not be entertained for the first year of performance to allow the Contracting Officer to assess performance against the basic requirements. If a cost reduction project impacts more than a single contract, the Contractor may, upon concurrence of the Contracting Officers responsible for the affected contracts, submit a single CRP which addresses fully the cost savings projected on all affected contracts that contain this Shared Savings Clause. In the case of multiple contracts affected, responsibility for the review and approval of the CRP will be a matter to be decided by the affected Contracting Officers.

(2) Within 60 days of receipt, the Contracting Officer shall complete an initial evaluation of any proposed cost reduction plan to determine its feasibility. Failure of the Contracting Officer to provide a response within 60 days shall not be construed as approval of the CRP. The Government shall promptly notify the Contractor of the results of its initial evaluation and indicate what, if any, further action will be taken. If the Government determines that the proposed CRP has merit, it will open discussions with the Contractor to establish the cost savings to be recognized, the Contractor's share of the cost savings, and a payment schedule. The Contractor shall continue to perform in accordance with the terms and conditions of the existing contract until a contract modification is executed by the Contracting Officer. The modification shall constitute approval of the CRP and shall incorporate the changes identified by the CRP, adjust the contract cost and/or price, establish the Contractor's share of cost savings, and incorporate the agreed to payment schedule.

(3) The Contractor will receive payment by submitting invoices to the Contracting Officer for approval. The amount and timing of individual payments will be made in accordance with the schedule to be established with the Contracting Officer. Notwithstanding the overall savings recognized by the Contracting Officer as a result of an approved CRP, payment of any portion of the Contractor's share of savings shall not be made until NASA begins to realize a net cost savings on the contract (i.e., implementation, startup and other increased costs resulting from the change have been offset by cumulative cost savings). Savings associated with unexercised options will not be paid unless and until the contract options are exercised. It shall be the responsibility of the Contractor to provide such justification as the Contracting Officer deems necessary to substantiate that cost savings are being achieved.

(4) Any future activity, including a merger or acquisition undertaken by the Contractor (or to which the Contractor becomes an involved party), which has the effect of reducing or reversing the cost savings realized from an approved CRP for which the Contractor has received payment may be cause for recomputing the net cost savings associated with any approved CRP. The Government reserves the right to make an adjustment to the Contractor's share of cost savings and to receive a refund of moneys paid if necessary. Such adjustment shall not be made without notifying the Contractor in advance of the intended action and affording the Contractor an opportunity for discussion.

(g) Limitations. Contract requirements that are imposed by statute shall not be targeted for cost reduction exercises. The Contractor is precluded from receiving reimbursements under both this clause and other incentive provisions of the contract, if any, for the same cost reductions.

(h) Disapproval of, or failure to approve, any proposed cost reduction proposal shall not be considered a dispute subject to remedies under the Disputes clause.

(i) Cost savings paid to the Contractor in accordance with the provisions of this clause do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b).

(End of clause)

[62 FR 14033, Mar. 25, 1997]

1852.244–70 Geographic participation in the aerospace program.

As prescribed in 1844.204–70, insert the following clause:

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of $100,000 and over.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14034, Mar. 25, 1997]

1852.245–70 Contractor requests for government-owned equipment.

As prescribed in 1845.106–70(a), insert the following clause:

CONTRACTOR REQUESTS FOR GOVERNMENT-OWNED EQUIPMENT (JUL 1997)

(a) ''Equipment,'' as used in this clause, means commercially available items capable of stand-alone use, including those to be acquired for incorporation into special test equipment or special tooling.

(b)(1) Upon determination of need for any Government-owned equipment item for performance of this contract, the contractor shall provide to the contracting officer a written request justifying the need for the equipment and the reasons why contractor-owned property cannot be used, citing the applicable FAR or contract authority for use of Government-owned equipment. Equipment being acquired as a deliverable end item listed in the contract or as a component for incorporation into a deliverable end item listed in the contract is exempt from this requirement.

(2) The contractor's request shall include a description of the item in sufficient detail to enable the Government to screen its inventories for available equipment or to purchase equipment. For this purpose, the contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, or equivalent format, for each item requested and (ii) forward it through the contracting officer to the Industrial Property Officer at the cognizant NASA installation at least 30 days in advance of the date the contractor intends to acquire the item. Multiple units of identical items may be requested on a single form. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7102. If a certificate of nonavailability is not received within that period, the contractor may proceed to acquire the item, subject to having obtained contracting officer consent, if required, and having complied with any other applicable provisions of this contract.

(c) Contractors who are authorized to conduct their own screening using the NASA Equipment Management System (NEMS) and other Government sources of excess property shall provide the evidence of screening results with their request for contracting officer consent. Requests to purchase based on unsuitability of items found shall include rationale for the determined unsuitability.

(End of clause)

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245–71 Installation-accountable government property.

As prescribed in 1845.106–70(b), insert the following clause:

INSTALLATION-ACCOUNTABLE GOVERNMENT PROPERTY

(JUL 1997)

(a) The Government property described in the clause at 1852.245–77, List of Installation-Provided Property and Services, shall be made available to the contractor on a no-charge basis for use in performance of this contract. This property shall be utilized only within the physical confines of the NASA installation that provided the property. Under this clause, the Government retains accountability for, and title to, the property, and the contractor assumes the following user responsibilities: [Insert contractor user responsibilities].

The contractor shall establish and adhere to a system of written procedures for compliance with these user responsibilities. Such procedures must include holding employees liable, when appropriate, for loss, damage, or destruction of Government property.

(b)(1) The official accountable recordkeeping, physical inventory, financial control, and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation Supply and Equipment Management Officer (SEMO) and Financial Management Officer. If this contract provides for the contractor to acquire property, title to which will vest in the Government, the following additional procedures apply:

(i) The contractor's purchase order shall require the vendor to deliver the property to the installation central receiving area;

(ii) The contractor shall furnish a copy of each purchase order, prior to delivery by the

vendor, to the installation central receiving area;

(iii) The contractor shall establish a record of the property as required by FAR 45.5 and 1845.5 and furnish to the Industrial Property Officer a DD Form 1149 Requisition and Invoice/Shipping Document (or installation equivalent) to transfer accountability to the Government within 5 working days after receipt of the property by the contractor. The contractor is accountable for all contractor-acquired property until the property is transferred to the Government's accountability.

(iv) Contractor use of Government property at an off-site location and off-site subcontractor use require advance approval of the contracting officer and notification of the SEMO. The contractor shall assume accountability and financial reporting responsibility for such property. The contractor shall establish records and property control procedures and maintain the property in accordance with the requirements of FAR Part 45.5 until its return to the installation.

(2) After transfer of accountability to the Government, the contractor shall continue to maintain such internal records as are necessary to execute the user responsibilities identified in paragraph (a) and document the acquisition, billing, and disposition of the property. These records and supporting documentation shall be made available, upon request, to the SEMO and any other authorized representatives of the contracting officer.

(End of clause)

ALTERNATE I

(March 1989)

As prescribed in 1845.106–70(b)(2), insert the following as subparagraph (b)(3) of the basic clause:

(3) The contractor shall not utilize the installation's central receiving facility for receipt of Contractor-acquired property. However, the Contractor shall provide listings suitable for establishing accountable records of all such property received, on a quarterly basis, to the Contracting Officer and the Supply and Equipment Management Officer.

[62 FR 36735, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245–72 Liability for government property furnished for repair or other services.

As prescribed in 1845.106–70(c), insert the following clause:

LIABILITY FOR GOVERNMENT PROPERTY FURNISHED FOR REPAIR OR OTHER SERVICES (MAR 1989)

(a) This clause shall govern with respect to any Government property furnished to the Contractor for repair or other services that is to be returned to the Government. Such property, hereinafter referred to as ''Government property furnished for servicing,'' shall not be subject to any clause of this contract entitled Government-Furnished Property or Government Property.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government. The Contractor shall maintain adequate records and procedures to ensure that the Government property furnished for servicing can be readily accounted for and identified at all times while in its custody or possession or in the custody or possession of any subcontractor.

(c) The Contractor shall be liable for any loss or destruction of or damage to the Government property furnished for servicing: (1) Caused by the Contractor's failure to exercise such care and diligence as a reasonable prudent owner of similar property would exercise under similar circumstances, or (2) sustained while the property is being worked upon and directly resulting from that work, including, but not limited to, any repairing, adjusting, inspecting, servicing, or maintenance operation. The Contractor shall not be liable for loss or destruction of or damage to Government property furnished for servicing resulting from any other cause except to the extent that the loss, destruction, or damage is covered by insurance (including self-insurance funds or reserves).

(d) In addition to any insurance (including self-insurance funds or reserves) carried by the Contractor and in effect on the date of this contract affording protection in whole or in part against loss or destruction of or damage to such Government property furnished for servicing, the amount and coverage of which the Contractor agrees to maintain, the Contractor further agrees to obtain any additional insurance covering such loss, destruction, or damage that the Contracting Officer may from time to time require. The requirements for this additional insurance shall be effected under the procedures established by the FAR 52.243 changes clause of this contract.

(e) The Contractor shall hold the Government harmless and shall indemnify the Government against all claims for injury to persons or damage to property of the Con-tractor or others arising from the Contractor's possession or use of the Government property furnished for servicing or arising from the presence of that property on the Contractor's premises or property.

(End of clause)

1852.245–73 Financial reporting of NASA property in the custody of contractors.

As prescribed in 1845.106–70(d), insert the following clause:

FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (SEPT 1996)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with 1845.505–14, the instructions on the form, and subpart 1845.71. Subcontractor use of NF 1018 is not required by this clause; however, the contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(b) If administration of this contract has been delegated to the Department of Defense, the original of NASA Form 1018 shall be submitted to the NASA installation Financial Management Officer and three copies shall be sent concurrently through the DOD Property Administrator to the NASA office identified below. If the contract is administered to NASA, the original of NF 1018 shall be submitted to the installation Financial Management Officer, and three copies shall be sent concurrently to the following NASA office:

(Insert the address and office code of the organization within the cognizant NASA installation.)

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports when due. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by the Government. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report is required within 30 days after disposition of all property subject to reporting when the contract performance period is complete.

(End of clause)

[61 FR 47086, Sept. 6, 1996]

1852.245–74 Contractor Accountable On-Site Government Property.

As prescribed in 1845.106–70(e), insert the following clause:

CONTRACTOR ACCOUNTABLE ON-SITE GOVERNMENT PROPERTY (MAR 1989)

(a) In performance of work under this contract, certain Government property identified in the contract shall be provided to the Contractor on a no-charge-for-use basis by the installation's Supply and Equipment Management Officer. That property shall be utilized in the performance of this contract at the installation that provided the property or at such other installations or locations as may be specified elsewhere in this contract. The Contractor assumes accountability and user responsibilities for the property.

(b) Government property provided shall in every respect be subject to the provisions of the FAR 52.245 Government property clause of this contract. In addition, the contractor is responsible for managing this property in accordance with the guidelines provided by the installation's Supply and Equipment Management Officer or any other formally designated representatives of the Contracting Officer. The guidelines include but are not limited to requiring the Contractor to—

(1) Use economic order quantity (EOQ) methods for routine stock replenishment;

(2) Utilize the Federal Cataloging System;

(3) Comply with shelf-life requirements;

(4) Provide for accountability and control (using the NASA Equipment Management System (NEMS)) of all equipment costing $1000 and over, plus that equipment designated as ''sensitive'';

(5) Provide for physical inventory of all controlled equipment at least every 3 years;

(6) Provide for sample inventories of materials plus complete inventories every 5 years;

(7) Conduct walk-through utilization inspections;

(8) Screen NEMS before acquiring any equipment costing $1000 or over, plus equipment designated by the installation as sensitive and costing $500 and over;

(9) Support the Equipment Acquisition Document (EAD) process; and

(10) Use Government sources as the first source of supply.

(c) Data requirements relating to the guidelines in paragraph (b) of this clause are specified under section F, Deliveries or performance.

(End of clause)

1852.245–75 Title to equipment.

As prescribed in 1845.106–70(f), insert the following clause:

TITLE TO EQUIPMENT (MAR 1989)

(a) In accordance with the FAR 52.245 Government property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor with funds provided for conducting research

under this contract and having an acquisition cost less than $_____ [Insert a dollar value not less than $5,000] shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of $_____ [Insert the dollar value specified in paragraph (a)] or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606–5.

(c) Title to the property specified in paragraph (b) of this clause vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) of this clause to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

[List any contractor-acquired property for which vesting of title with the Government is appropriate or insert ''None''].

(End of clause)

1852.245–76 List of Government-furnished property.

As prescribed in 1845.106–70(g), insert the following clause:

LIST OF GOVERNMENT-FURNISHED PROPERTY (OCT 1988)

For performance of work under this contract, the Government will make available Government property identified below or in Attachment _____[Insert attachment number or ''not applicable''] of this contract on a no-charge-for-use basis. The Contractor shall use this property in the performance of this contract at _____[Insert applicable site(s) where property will be used] and at other location(s) as may be approved by the Contracting Officer. Under the FAR 52.245 Government property clause of this contract, the Contractor is accountable for the identified property.

Item	Quantity	Acquisition cost	Date to be furnished to the contractor
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....

[Insert a description of the item(s), quantity, acquisition cost, and date the property will be furnished to the Contractor]

(End of clause)

1852.245–77 List of installation-accountable property and services.

As prescribed in 1845.106–70(h), insert the following clause:

LIST OF INSTALLATION-ACCOUNTABLE PROPERTY AND SERVICES (JUL 1997)

In accordance with the clause at 1852.245–71, Installation-Accountable Government Property, the Contractor is authorized use of the types of property and services listed below, to the extent they are available, in the performance of this contract within the physical borders of the installation which may include buildings and space owned or directly leased by NASA in close proximity to the installation, if so designated by the Contracting Officer.

(a) Office space, work area space, and utilities. Government telephones are available for official purposes only; pay telephones are available for contractor employees for unofficial calls.

(b) General- and special-purpose equipment, including office furniture.

(1) Equipment to be made available is listed in Attachment ___ [Insert attachment number or ''not applicable'' if no equipment is provided]. The Government retains accountability for this property under the clause at 1852.245–71, Installation-Accountable Government Property, regardless of its authorized location.

(2) If the Contractor acquires property, title to which vests in the Government pursuant to other provisions of this contract, this property also shall become accountable to the Government upon its entry into Government records as required by the clause at 1852.245–71, Installation-Accountable Government Property.

(3) The Contractor shall not bring to the installation for use under this contract any property owned or leased by the Contractor, or other property that the Contractor is accountable for under any other Government contract, without the Contracting Officer's prior written approval.

(c) Supplies from stores stock.

(d) Publications and blank forms stocked by the installation.

(e) Safety and fire protection for Contractor personnel and facilities.

(f) Installation service facilities: _____ [Insert the name of the facilities or ''None'']

(g) Medical treatment of a first-aid nature for Contractor personnel injuries or illnesses sustained during on-site duty.

(h) Cafeteria privileges for Contractor employees during normal operating hours.

(i) Building maintenance for facilities occupied by Contractor personnel.

(j) Moving and hauling for office moves, movement of large equipment, and delivery of supplies. Moving services shall be provided on-site, as approved by the Contracting Officer.

(k) The user responsibilities of the Contractor are defined in paragraph (a) of the clause at 1852.245–71, Installation-Accountable Government Property.

(End of clause)

[62 FR 36736, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245–79 Use of government-owned property.

As prescribed in 1845.106–70(j), insert the following provision:

USE OF GOVERNMENT-OWNED PROPERTY (JUL 1997)

(a) The offeror ( ) does, ( ) does not intend to use in performance of any contract awarded as a result of this solicitation existing Government-owned facilities (real property or plant equipment), special test equipment, or special tooling (including any property offered by this solicitation). The offeror shall identify any offered property not intended to be used. If the offeror does intend to use any of the above items, the offeror must furnish the following information required by Federal Acquisition Regulation (FAR) 45.205(b), and NASA FAR Supplement (NFS) 1845.102–71:

(1) Identification and quantity of each item. Include the item's acquisition cost if it is not property offered by this solicitation.

(2) For property not offered by this solicitation, identification of the Government contract under which the property is accountable and written permission for its use from the cognizant Contracting Officer.

(3) Amount of rent, calculated in accordance with FAR 45.403 and the clause at FAR 52.245–9, Use and Charges, unless the property has been offered on a rent-free basis by this solicitation.

(4) The dates during which the property will be available for use, and if it is to be used in more than one contract, the amounts of respective uses in sufficient detail to support proration of the rent. This information is not required for property offered by this solicitation.

(b) The offeror ( ) does, ( ) does not request additional Government-provided property for use in performing any contract awarded as a result of this solicitation. If the offeror requests additional Government-provided property, the offeror must furnish—

(1) Identification of the property, quantity, and estimated acquisition cost of each item; and

(2) The offeror's written statement of its inability to obtain facilities as prescribed by FAR 45.302–1(a)(4).

(c) If the offeror intends to use any Government property (paragraph (a) or (b) of this provision), the offer must also furnish the following:

(1) The date of the last Government review of the offeror's property control and accounting system, actions taken to correct any deficiencies found, and the name and telephone number of the cognizant property administrator.

(2) A statement that the offeror has reviewed, understands, and can comply with all property management and accounting procedures in the solicitation, FAR Subpart 45.5, and NFS Subparts 1845.5 and 1845.71.

(3) A statement indicating whether or not the costs associated with paragraph (c)(2) of this provision, including plant clearance and/or plant reconversion costs, are included in its cost proposal.

(End of provision)

[62 FR 36736, July 9, 1997; 62 FR 40309, July 28, 1997]

1852.245–80 Use of Government production and research property on a no-charge basis.

As prescribed in 1845.106–70(k), insert the following clause:

USE OF GOVERNMENT PRODUCTION AND RESEARCH PROPERTY ON A NO-CHARGE BASIS (MAR 1989)

In performing this contract, the Contractor is authorized to use on a no-charge, non-interference basis the Government-owned production and research property provided to the Contractor under the contract(s) specified below and identified in the cognizant Contracting Officer's letter approving use of the property. Use is authorized on the basis that it will not interfere with performance of the Government contract(s) under which the property was originally furnished. Use shall be in accordance with the terms and conditions of these contracts and the cognizant Contracting Officer's approval letter.

Contract No(s): [Insert the contract number(s) under which the Government property is accountable].

(End of clause)

1852.246–70 Mission Critical Space System Personnel Reliability Program.

As prescribed in 1846.370(a), insert the following clause:

MISSION CRITICAL SPACE SYSTEM

PERSONNEL RELIABILITY PROGRAM (MAR 1997)

(a) In implementation of the Mission Critical Space System Personnel Reliability Program, described in 14 CFR 1214.5, the Government shall identify personnel positions that are mission critical. Some of the positions as identified may now or in the future be held by employees of the Contractor. Upon notification by the Contracting Officer that a mission-critical position is being or will be filled by one or more of the Contractor's employees, the Contractor shall (1) provide the affected employees with a clear understanding of the investigative and medical requirements and, (2) to the extent permitted by applicable law, assist the Government by furnishing personal data and medical records.

(b) The standard that will be used in certifying individuals for a mission-critical position is that they must be determined to be suitable, competent, and reliable in the performance of their assigned duties in accordance with the screening requirements 14 CFR 1214.5. If the Government determines that a Contractor employee occupying or nominated to occupy a mission-critical position will not be certified for such duty, the Contracting Officer shall (1) furnish to the employee the specific reasons for its action; (2) advise the employee that he/she may avail himself/herself of the review procedures that are a part of the certification system; and (3) furnish him/her a copy of those procedures upon request.

(c) If a Contractor employee who has been nominated for (but has not yet filled) a mission-critical position is not certified, the Contractor agrees to defer the appointment to the position until the employee has had an opportunity to pursue the referenced procedures. If the employee is an incumbent to the position, the Contractor agrees, upon the request of the Government, to remove him/her from the position temporarily pending an appeal of the action under the review procedures. If any employee not certified elects not to take action under the procedures, or, if having taken action, is not successful in obtaining a reversal of the determination, the Contractor agrees not to appoint the employee to the position, or if already appointed, to promptly remove the employee.

(End of clause)

[62 FR 14034, Mar. 25, 1997]

1852.246–71 Government contract quality assurance functions.

As prescribed in 1846.470, insert the following clause:

GOVERNMENT CONTRACT QUALITY ASSURANCE FUNCTIONS (OCT 1988)

In accordance with the inspection clause of this contract, the Government intends to perform the following functions at the locations indicated:

Item	Quality Assurance Function	Location

[Insert the items involving quality assurance, the quality assurance functions, and where the functions will be performed]

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 55 FR 27090, June 19, 1990; 62 FR 14035, Mar. 25, 1997]

1852.246–72 Material inspection and receiving report.

As prescribed in 1846.674, insert the following clause:

MATERIAL INSPECTION AND RECEIVING REPORT (JUNE 1995)

(a) At the time of each delivery to the Government under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series) prepared in ____ [Insert number of copies, including original] copies, an original and ____ copies [Insert number of copies].

(b) The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 1846.672–1. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope, which shall be securely attached to the exterior of the package in the most protected location.

(c) When more than one package is involved in a shipment, the Contractor shall list on the DD Form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words ''CONTAINS DD FORM 250'' on the package.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 60 FR 40521, Aug. 9, 1995; 62 FR 14035, Mar. 25, 1997]

1652.246–73 Human Space Flight Item.

As prescribed in 1845.370(b), insert the following clause:

HUMAN SPACE FLIGHT ITEM (MAR 1997)

The Contractor shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

''FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY.

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER.''

(End of clause)

[62 FR 14035, Mar. 25, 1997]

1852.247–71 Protection of the Florida Manatee.

As prescribed in 1847.7001, insert the following clause:

PROTECTION OF THE FLORIDA MANATEE (MAR 1989)

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93–205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92–522), the Florida Manatee (Trichechus Manatus) has been designated an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work, and selected disassembly functions shall be provided training relative to (1) habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow-water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFWS personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (407) 867–5330.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM–TNG, telephone (407) 867–2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

1852.247–72 Advance Notice of Shipment.

As prescribed in 1847.305–70(a), insert the following clause:

ADVANCE NOTICE OF SHIPMENT (OCT 1988)

_____[Insert number of work days] work days prior to shipping item(s)_____[Insert items to be shipped], the Contractor shall furnish the anticipated shipment date, bill of lading number (if applicable), and carrier identity to _____[Insert individual(s) to receive notification] and to the Contracting Officer.

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

1852.247–73 Shipment by Government bills of lading.

As prescribed in 1847.305–70(b), insert the following clause:

SHIPMENT BY GOVERNMENT BILLS OF LADING (MAR 1997)

(a) The Contractor shall ship items deliverable under this contract, if the transportation cost per shipment exceeds $100, by Government bills of lading (GBLs). At least 15 days before shipment, the Contractor shall request in writing GBLs from:_____[Insert name, title, and mailing address of designated transportation officer or other official delegated responsibility for GBLs]. If time is limited, requests may be by telephone:_____[Insert appropriate telephone number]. Requests for GBLs shall include the following information.

(1) Item identification/description.
(2) Origin and destination.
(3) Individual and total weights.
(4) Dimensions and total cubic footage.
(5) Total number of pieces.
(6) Total dollar value.
(7) Other pertinent data.

(b) The Contractor shall prepay transportation charges of $100 or less per shipment. The Government shall reimburse the contractor for these charges if they are added to the invoice as a separate line item supported

by the paid freight receipts. If paid receipts in support of the invoice are not obtainable, a certificate as described below must be completed, signed by an authorized company representative, and attached to the invoice.

I certify that the shipments identified below have been made, transportation charges have been paid by (company name), and paid freight or comparable receipts are not obtainable.

Contract or Order Number: _____

Destination: _____

(End of clause)

[54 FR 28340, July 5, 1989, as amended at 62 FR 14035, Mar. 25, 1997]

1852.249–72 Termination (utilities).

As prescribed in 1849.505–70, insert the following clause. The period of 30 days may be varied not to exceed 90 days.

TERMINATION (UTILITIES) (MAR 1989)

The Government, at its option, may terminate this contract by giving written notice not less than 30 days in advance of the termination's effective date.

(End of clause)

Subpart 1852.3—Provision and Clause Matrix

1852.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract. See the first page of the matrix for the key to column headings, the dollar threshold chart, and requirement symbols.

[57 FR 40856, Sept. 8, 1992]

1852.301 Solicitation provisions and contract clauses (Matrix).

PART 1853—FORMS

Subpart 1853.1—General

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1853.100 Scope of subpart.
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Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.
1853.204 Administrative matters.
1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 531, 533M, 533Q, 1098, 1356, 1611, 1612, and Department of Defense Form 1593).
1853.208 Required sources of supplies and services.
1853.208–70 Other Government sources (Standard Form 1080, Air Force Form 858, Department of Energy Form 5400.3, Nuclear Regulatory Commission Form 313).
1853.215 Contracting by negotiation.
1853.215–2 Price negotiation (NASA Form 634 and Department of Defense Form 1861).
1853.216 Types of contracts.
1853.216–70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, and 781).
1853.217 Special contracting methods (NASA Form 523).
1853.232 Contract financing (Standard Forms 272, 272A).
1853.242 Contract administration.
1853.242–70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433, and 1634) and service request (NASA Form 1434).
1853.242–71 Notifications (NASA Form 456).
1853.245 Property (NASA Form 1018, Department of Defense Form 1419).
1853.246 Quality assurance (Department of Defense Forms 250 and 250c).
1853.249 Termination of contracts (NASA Forms 1412, 1413).

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.
1853.301 Standard forms.
1853.303 Agency forms.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 36737, July 9, 1997, unless otherwise noted.

Subpart 1853.1—General

1853.100 Scope of subpart.

This subpart contains information regarding the forms prescribed in this Regulation. Unless specified otherwise, the policies in FAR Part 53 apply to NASA-prescribed forms.

1853.101 Requirements for use of forms.

The requirements for use of the forms in this part are contained in Parts 1801 through 1852 where the subject matter applicable to each form is addressed. The specific location of each form's prescription is identified in subpart 1853.2.

1853.103 Exceptions.

(1) Requests for exceptions to standard or optional forms shall be forwarded through the center forms manager to the Headquarters Office of Procurement (Code HK).

(2) Alteration of any form in this part is prohibited unless prior approval has been obtained from the Headquarters Office of Management Systems and Facilities, Information Resources Management Division (Code JT). Requests for alteration shall be coordinated with the center forms manager before transmittal to Code JT.

(3) Use for the same purpose of any form other than one prescribed by this Regulation requires prior approval of Code HK.

1853.105 Computer generation.

Forms prescribed by this Regulation may be adapted for computer preparation providing there is no change to the name, content, or sequence of the data elements, and the form carries the form number and edition date.

1853.107 Obtaining forms. (NASA supplements paragraph (c))

(c)(i) NASA centers and offices may obtain forms prescribed in the FAR or in this Regulation from Goddard Space Flight Center, Code 239. Orders should be placed on a NASA Form 2, Request for Blank Forms, Publications and Issuances.

(ii) Contracting officers, at the time of contract award, shall ensure that contractors are notified of the procedures for obtaining NASA forms required for performance under the contract.

1853.108 Recommendations concerning forms.

Code HK is the office responsible for submitting form recommendations.

Subpart 1853.2—Prescription of Forms

1853.200 Scope of subpart.

This subpart summarizes the prescriptions of NASA forms and other forms adopted by NASA for use in acquisition.

1853.204 Administrative matters.

1853.204–70 General (NASA Forms 507, 507A, 507B, 507G, 507M, 531, 533M, 533Q, 1098, 1356, 1611, 1612 and Department of Defense Form 1593).

(a) The following forms are prescribed in 1804.670–3:

(1) NASA Form 507, Individual Procurement Action Report (New Awards).

(2) NASA Form 507A, Individual Procurement Action Report (New Awards) Supplement A.

(3) NASA Form 507B, Individual Procurement Action Report Supplement B.

(4) NASA Form 507G, Individual Procurement Action Report (Grants/Orders).

(5) NASA Form 507M, Individual Procurement Action Report (Modifications).

(b) *NASA Form 531, Name Check Request.* Prescribed in 1852.204–76.

(c) The following forms are prescribed in 1842.72:

(1) NASA Form 533M, Monthly Contractor Financial Management Report.

(2) NASA Form 533Q, Quarterly Contractor Financial Management Report.

(d) *NASA Form 1098, Checklist for Contract Award File Content.* Prescribed in 1804.803–70.

(e) *NASA Form 1356, C.A.S.E. Report on College and University Projects.* Prescribed in 1804.671.

(f) *NASA Form 1611, Contract Completion Statement.* Prescribed in 1804.804–2 and 1804.804–5.

(g) The following forms are prescribed in 1804.804–5:

(1) NASA Form 1612, Contract Closeout Checklist.

(2) DD Form 1593, Contract Administration Completion Record.

1853.208 Required sources of supplies and services.

1853.208–70 Other Government sources (Standard Form 1080, Air Force Form 858, Department of Energy Form 5400.3, Nuclear Regulatory Commission Form 313).

(a) *SF 1080, Voucher for Transfers Between Appropriations and/or Funds (Disbursement).* Prescribed in 1808.002–72(e).

(b) *Air Force Form 858, Forecast of Requirements (Missile Propellants and Pressurants).* Prescribed in 1808.002–72(f).

(c) *Department of Energy Form 5400.3, Isotope Order Blank.* Prescribed in 1808.002–70(a).

(d) *Nuclear Regulatory Commission Form 313, Application for Material License.* Prescribed in 1808.002–70(a).

1853.215 Contracting by negotiation.

1853.215–2 Price negotiation (NASA Form 634 and Department of Defense Form 1861).

(a) *NASA Form 634, Structured Approach—Profit/Fee Objective.* Prescribed in 1815.970–1(a).

(b) *DD Form 1861, Contract Facilities Capital Cost of Money.* Prescribed in 1830.70, and instructions for completion are in 1830.7001–2.

1853.216 Types of contracts.

1853.216–70 Assignees under cost-reimbursement contracts (NASA Forms 778, 779, 780, and 781).

The following forms are prescribed in 1852.216–89:

(a) NASA Form 778, Contractor's Release.

(b) NASA Form 779, Assignee's Release.

(c) NASA Form 780, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.

(d) NASA Form 781, Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

1853.217 Special contracting methods (NASA Forms 523).

NASA Form 523, NASA-Defense Purchase Request. Prescribed in 1808.002–72(b) and 1817.7002.

1853.232 Contract financing (Standard Forms 272, 272A).

The following forms are prescribed in 1832.412(a)(ii):

(a) SF 272, Federal Cash Transactions Report.

(b) SF 272A, Federal Cash Transactions Report Continuation.

1853.242 Contract administration.

1853.242–70 Delegation (NASA Forms 1430, 1430A, 1431, 1432, 1433, and 1634) and service request (NASA Form 1434).

(a) *NASA Form 1430, Letter of Contract Administration Delegation, General.* Prescribed in 1842.202(d)(ii).

(b) *NASA Form 1430A, Letter of Contract Administration Delegation, Special Instructions.* Prescribed in 1842.202(d)(ii).

(c) *NASA Form 1431, Letter of Acceptance of Contract Administration Delegation.* Prescribed in 1842.202(d)(iii).

(d) *NASA Form 1432, Letter of Contract Administration Delegation, Termination.* Prescribed in 1842.202(b)(1)(G).

(e) *NASA Form 1433, Letter of Audit Delegation.* Prescribed in 1842.202(d)(iv).

(f) *NASA Form 1634, Contracting Officer Technical Representative (COTR) Delegation.* Prescribed in 1842.270(b).

(g) *NASA Form 1434, Letter of Request for Pricing-Audit Technical Evaluation Services.* Prescribed in 1815.805–5(a)(1)(E).

1853.242–71 Notifications (NASA Form 456).

NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved. Prescribed in 1842.803(b)(2).

1853.245 Property (NASA Form 1018, Department of Defense Form 1419).

(a) *NASA Form 1018, NASA Property in the Custody of Contractors.* Prescribed in 1845.505–14. Instructions for form completion are in 1845.7101.

(b) DD Form 1419, DOD Industrial Plant Equipment Requisition. Prescribed in 1852.245–70. Instructions for form completion are in 1845.7102.

1853.246 Quality assurance (Department of Defense Forms 250 and 250c).

The following forms are prescribed in 1846.670. Instructions for form completion are in 1846.670:

(a) DD Form 250, Material Inspection and Receiving Report

(b) DD Form 250c, Material Inspection and Receiving Report-Continuation Sheet.

1853.249 Termination of contracts (NASA Forms 1412, 1413).

(a) *NASA Form 1412, Termination Authority*. Prescribed in 1849.101–71.

(b) *NASA Form 1413, Termination Docket Checklist*. Prescribed in 1849.105–70.

Subpart 1853.3—Illustrations of Forms

1853.300 Scope of subpart.

This subpart contains illustrations of NASA forms and others forms used by NASA in acquisitions and not prescribed in the FAR.

1853.301 Standard forms.

This section illustrates standard forms (SFs) specified for use in acquisitions.

1853.303 Agency forms.

This section illustrates NASA and other agency forms specified for use in acquisitions. The other agency forms are arranged numerically by agency following the NASA forms.

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

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AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

1871.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, including commercial items, and services.

Subpart 1871.1—General

1871.101 Purpose.

The purpose of this part is to establish policies and procedures that implement the MidRange procurement process.

1871.102 Authority.

The Office of Federal Procurement Policy has provided authority for NASA to conduct a pilot test of a new procurement process within the scope of this part.

1871.103 Applicability.

(a) This part applies to all acquisitions, as described in 1871.103(b), conducted at NASA installations except as provided in 1871.401–4(a)(3).

(b) This part applies to all contract actions the aggregate amount of which is greater than the simplified acquisition threshold (SAT) (FAR part 13) and not more than $2,000,000 in basic value (not more than $10,000,000 with options) and for commercial items (FAR part 12) not more than $25,000,000 including options. This part may be used for commercial item contracts above $25,000,000 at the installation's discretion.

(c) For other than commercial items, if the Government estimate for the basic award amount or any option amount, if any, exceeds the limits of 1871.103(b), the procurement will be processed under FAR and NFS procurement procedures applicable to large procurements (see FAR parts 14 and 15). When the estimate is within the range of 1871.103(b) and the procurement was started using these procedures but the offered prices/costs exceed the MidRange ceiling, the procurement may continue under MidRange procedures, provided that:

(1) The price/cost can be determined to be fair and reasonable,

(2) The successful offeror accepts incorporation of required FAR and NFS clauses applicable to large procurements, and

(3) The procurement does not exceed $3,000,000 for the basic requirement or $15,000,000 for the total requirement.

1871.104 Definitions.

The following terms are used throughout part 1871 as defined in this subpart.

(a) *NASA Acquisition Internet Service* or *NAIS* means the Internet home page (URL: http://procurement.nasa.gov) through which users may access documents available in electronic format.

(b) *MidRange procurement procedure* means a set of procedures within the authority of 1871.102 and the applicability of 1871.103.

(c) *Request for Offer (RFO)* means the solicitation used to request offers for all authorized MidRange procurements.

(d) *Clarification* and *Discussion* are used as defined in FAR 15.601.

(e) *Commercial item* is used as defined in FAR 2.101.

1871.105 Policy.

(a) Under MidRange procedures, cost or pricing data and certification thereof shall be in accordance with FAR 15.804.

(b) Procurements conducted under part 1871, unless otherwise properly restricted under the provisions of FAR part 6, are considered to be full and open competition after exclusion of sources in accordance with FAR 6.203, Set-asides for small business concerns, or full and open competition in accordance with FAR part 6, subpart 6.1.

(c) Options may be included in the acquisition provided they conform to 1871.103(b) or do not exceed $10,000,000 for the total requirement ($25,000,000 for commercial items), options included.

(d) The appropriate part 1871 post-selection processes (negotiation, award, and publication of award) may be used to the extent applicable for Small Business Innovation Research (SBIR), broad agency announcements, unsolicited proposals, and Small Business Administration 8(a) procurement actions within the applicability of 1871.103(b).

(e) The NAIS will be used to the maximum extent practicable to disseminate advance procurement information and conduct part 1871 procurements.

(f) Use of locally generated forms is encouraged where their use will contribute to the efficiency and economy of the process. NASA Forms 1667, Request for Offer, and 1668, Contract, or computer generated versions of these forms may be used as the solicitation and contract cover sheets, respectively, except that the SF1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair) shall be used for construction acquisitions and the SF1449, Solicitation/Contract/Order for Commercial Items, shall be used for commercial item acquisitions. Contractor generated forms or formats for solicitation response should be allowed whenever possible. There is no requirement for uniform formats (see FAR 15.406).

Subpart 1871.2—Planning and Requirements Process

1871.201 Use of buying team.

MidRange procedures are based on the use of a buying team to conduct the procurement. The concept is to designate individuals who are competent in their respective functional areas, provide those individuals with the basic authority to conduct the procurement and hold them accountable for the results. The buying team will normally consist of one technical member and one procurement member, but may be augmented with additional members

as necessary, Personnel providing normal functional assistance to the team (e.g., legal, financial) will not be considered a part of the team unless so designated. To function properly, the team should be given the maximum decision authority in matters related to the procurement. When higher level management approvals remain essential, it will be incumbent upon the functional team member to obtain such approvals.

1871.202 Organizatonal responsibilities.

1871.202–1 Requiring organization.

The requirements organization shall appoint, by name, the technical member of the buying team. This individual will normally be an end user or the one most familiar with the technical aspects of the requirement. The individual appointed, whatever the relationship with the procured item, is expected to totally fulfill the responsibilities to the buying team.

1871.202–2 Procurement organization.

The procurement organization shall appoint the procurement member of the buying team. This individual shall be a warranted contracting officer or a contract specialist with broad latitude to act for the contracting officer. The procurement member shall be the team leader with the ultimate responsibility to conduct the procurement.

1871.202–3 Supporting organizations.

Buying team members may require additional team members to perform specialized functions or to assist in the evaluation of offers. Requests for supporting members shall be made by the organization identifying the need for the support and directed to the appropriate management level in the supporting organization. Supporting team members, once designated for the team, shall fulfill all applicable responsibilities to the team as other members.

1871.202–4 Center management.

Center managers shall, to the maximum extent practical and consistent with their responsibilities to manage the Center mission, convey sufficient authority to members of the buying team to conduct the procurement. Administrative or technical approvals should be minimized, and where deemed essential, facilitated to the maximum extent practicable. Center managers should lend their full support to the buying team should problems arise from the procurement.

1871.203 Buying team responsibilities.

(a) The buying team shall conduct the procurement in a manner that best satisfies the user requirements and meets the norms expected of a Government procurement. Team members should develop open communications, rely on decisions of other responsible functional team members and meet their obligations to the team. The team will typically—

(1) Refine the final specifications for the solicitation;

(2) Decide the most appropriate solicitation method;

(3) Establish milestones for the procurement;

(4) Finalize the evaluation criteria;

(5) Develop the RFO and model contract; and

(6) Evaluate offers and determine the awardee.

(b) The procurement member of the buying team shall lead clarifications, discussions, and negotiations; shall be the source selection official; and shall conduct debriefings.

1871.204 Small business set-asides.

(a) Except as provided in paragraphs (b) through (e) of this section, each MidRange acquisition shall be reserved exclusively for small business concerns.

(b) The requirment for small business MidRange set-asides does not relieve the buying office of its responsibility to procure from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely handicapped, and multiple award Federal Supply Schedule contracts.

(c) Procurements not conducted as small business set-asides and under less than full and open competition require a Justification for Other than Full and Open Competition pursuant to FAR part 6.

(d) If the buying team procurement member determines there is no reasonable expectation of obtaining offers from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the buying team need not proceed with the small business set-aside and may purchase on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document the contract file with the reason for the unrestricted procurement.

(e) If the buying team proceeds with the small business MidRange set-aside and receives an offer from only one responsible small business concern at a reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the procurement on an unrestricted basis utilizing MidRange procedures. The buying team procurement members shall document in the file the reason for the unrestricted purchase.

(f) Each model contract under a small business MidRange set-aside shall contain the clause at FAR 52.219–6, Notice of Total Small Business Set-Aside.

Subpart 1871.3—Publicizing of Solicitation

1871.301 Publicizing policy.

(a) Use of the MidRange procedure is intended to streamline and expedite the acquisition process. Publication requirements for synopses are streamlined; however, it is in the Government's interest to provide as much advance notice as possible of a pending acquisition in order for the Government to obtain maximum competition.

(b) The dollar thresholds stated in 1871.302 are lower than the MidRange thresholds in 1871.103. They are based on Section 5062 of the Federal Acquisition Streamlining Act.

1871.302 Publicizing procedure.

(a) Synopses are not to be sent to or published in the Commerce Business Daily except if the basic award is expected to exceed $500,000, the total amount of the basic award plus options is expected to exceed $2,500,000, or annual obligations are expected to exceed $500,000 in any one year. For those acquisitions published both in the CBD and on the NAIS, the CBD publication date is the basis upon which the time frames specified in FAR 5.203 are calculated.

(b) A synopsis for each requirement shall be published on the NAIS prior to or simultaneously with the actual release of the solicitation.

(c) The synopsis shall comply with the requirements set forth in FAR 5.207(b) and shall:

(1) Include a statement that the competitive solicitation will be released via the NAIS, that potential offerors will be responsible for downloading their own copy of the solicitation, and that hard copies of the solicitation will not be mailed, and

(2) State the projected solicitation release date if the synopsis is published prior to solicitation release, provide notice that it is the offeror's responsibility to monitor the NAIS for solicitation release as the solicitation will be released as soon as practicable whether prior or subsequent to the projected date, and identify the name, telephone number, fax number, and e-mail address of a point of contact. The synopsis shall be updated to reflect significant changes to the original notice.

(d) For commercial item purchases, the streamlined solicitation (combined presolicitation notice and solicitation described in FAR part 12) may be used.

1871.303 Special situations.

Notices for special situations as described in FAR 5.205 involving MidRange Procurements must be published in the Commerce Business Daily. Such special situations include R&D sources sought, intent to sponsor or change the mission of a Federally Funded Research and Development Center, effort to locate commercial sources under OMB Circular No. A–76, and Section 8(a) competitive national buy acquisitions.

Subpart 1871.4—Request for Offer (RFO)

1871.400 General.

In MidRange procedures, solicitation of sources shall be accomplished by use of an RFO. The RFO will be solely a solicitation document incorporating only those elements of information required to solicit the offer. Offers will be provided on a model contract furnished with the RFO.

1871.401 Types of RFO'S.

The RFO may be used for all types of procurements to which MidRange is applicable. The distinguishing difference will be the evaluation and award criteria specified in the RFO. This, in turn, will be driven by the buying team's decisions on the extent of discussion required, the amount of nonprice factors that will influence the award and the amount of competition available. If the conditions in FAR 6.401(a) are met, the RFO's described in 1871.401–1 and 1871.401–2 shall be used; otherwise, RFO's described in 1871.401–3, 1871.401–4, 1871.401–5, or 1871.401–6 may be used. Once the evaluation and award criteria have been specified in the RFO, the procurement must conform to the procedures applicable to these criteria, unless changed by formal amendment to the RFO.

1871.401–1 Sealed offers.

(a) Policy. RFO's may specify that award will be made to the low, responsive, responsible offeror providing the most advantageous offer considering only price and price-related factors. This method shall be used when (1) time permits the solicitation, submission, and evaluation of sealed offers; (2) award will be made on the basis of price and other price-related factors; (3) conducting discussions with the offerors is not necessary; and (4) a reasonable expectation of receiving more than one offer exists. The RFO shall be in compliance with the requirements of FAR part 14 relating to Sealed Bidding.

(b) Procedures. (1) The RFO shall request offerors to provide a complete offer by the closing date specified.

(2) In accordance with FAR part 14, offers (whether received by facsimile or sealed envelope delivery) shall be publicly opened at the designated time and place. Interested members of the public will be permitted to attend the opening. Offers shall be abstracted pursuant to FAR part 14 and be available for public inspection. The abstract shall be included in the contract file.

(3) All offers shall be examined for mistakes in accordance with FAR 14.406. The buying team shall determine that a prospective contractor is responsible and that the prices offered are reasonable (see FAR 14.407–2).

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

1871.401–2 Two-step competitive procurement.

(a) Policy. (1) RFO's may specify that evaluation and award may be conducted in two distinct steps, similar in concept to ''Two Step Sealed Bidding.'' The MidRange Two Step process should be used when it is desirable to award to the lowest, responsive, responsible offeror after determining that the initial technical offer, or the revised technical offer, is acceptable.

(2) The procedures of FAR 14.503–2(a) shall be used once Step Two of this process begins.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified. Price offers are requested to ensure that they are accomplished in a timely manner and to reduce the time required for Step Two.

(2) Step One. The technical offer will be evaluated to determine if the product or service offered is acceptable. The buying team may proceed directly to Step Two if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional offers acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the buying team procurement member shall enter into discussions and request offeror(s) whose offer(s) is susceptible to being made acceptable to submit additional clarifying or

supplementing information to make it acceptable (see FAR 14.503–1). It is expected that these discussions will be conducted on an informal basis. After completion of discussions, the buying team shall proceed to Step Two.

(3) Step Two. If discussions were held, the buying team shall afford all offerors who have submitted acceptable offers and those offers with whom discussions were conducted, an opportunity, by a common date, to revise their price offers. No changes to technical offers will be permitted during this process. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each offeror. The procedures at 1871.401–1(b) (2) and (3) shall then be followed.

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

1871.401–3 Competitive negotiated procurement not using qualitative criteria.

(a) Policy. (1) RFO's may provide for discussion of all aspects of the offer but award is based on the technically acceptable offer having the lowest price (if fixed price) or the lowest most probable cost (if cost reimbursable). This method should be used when qualitative factors are not material in the award decision, but it is important to assure that technical offers and contract terms are fully compliant with the Government's needs. This method also permits direct discussion of price with offerors and is particularly appropriate when different approaches can be offered to satisfy the Government's need.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215–16, Alternate II, will be included in all RFO's for competitive negotiated procurements not using qualitative criteria except for solicitations for commercial item acquisitions.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified.

(2) *Initial evaluation.* The buying team shall review each offer to determine if all required information has been provided. No further evaluation shall be made of any offer that is deemed unacceptable because it does not meet the technical requirements of the RFO and is not reasonably susceptible to being made so. Offerors may be contacted for clarification purposes only during the initial evaluation. Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefore and excluded from further consideration. Documentation for such rejection should consist of one or more succinct statements of fact that show the offer is not acceptable. No documentation is required if all offers are deemed to be acceptable or reasonably susceptible to being made so.

(3) *Determination of finalists.* From among the acceptable offers and those susceptible to being made acceptable, the buying team shall rank the offers based on price (or most probable cost) and exclude any whose price/most probable cost precludes any reasonable chance of being selected for final award. The remaining offers constitute the ''finalists'' for the contract. Only in exceptional cases will this number be less than two offers. The procurement buying team member shall succinctly record the basis for the decision.

(4) *Discussions.* The procurement buying team member shall lead discussions with each finalist. The discussions are intended to assist the buying team in fully understanding each finalist's offer and to assure that all finalists are competing equally on the basis intended. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.610. It is expected that discussions will be conducted on an informal basis with each finalist. After completion of discussions, each finalist shall be afforded an opportunity to revise its offer to support and clarify its offer. A reasonable amount of time (Normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each

finalist. Such discussions are not required if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition, would not be in the Government's interest.

(5) *Selection*. The procurement team member shall be the source selection official. The source selection official may elect to make selection in lieu of determining finalists provided that it can be demonstrated that (i) selection of an initial offer(s) will result in the lowest price/cost to the Government and (ii) discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to evaluated price/cost. It is expected that the source selection statement will not ordinarily exceed one page and that the basis for the decision will be apparent upon review of the informal worksheets used in the evaluation process. These informal worksheets shall be included in the contract file.

(6) The names of offerors determined to be finalists or the name of the offeror selected for contract award will be electronically transmitted to all offerors. This will serve as notification to those offers that were not selected for further evaluation (see 1871.505).

1871.401–4 Competitive negotiations using qualitative criteria (Best Value Selection).

(a) Policy. (1) MidRange procurements shall normally use the BVS source selection method, prescribed in part 1871, subpart 1871.6, when it is desirable to base evaluation and award on a combination of price and non-price qualitative criteria.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215–16, Alternate II, will be included in all RFO's for competitive negotiated procurements using qualitative criteria except for solicitations for commercial item acquisitions.

(3) In exceptionally complex procurements, a source selection method other than MidRange Best Value Selection may be more appropriate. This may be appropriate in cases in which the following factors cannot be accommodated within the MidRange/BVS selection methodology:

(i) The ability to predefine the value characteristics that will constitute the discriminators among the offers;

(ii) The complexity of the interrelationships that must be evaluated;

(iii) The number of evaluators required to address the disciplines that will be involved in the offers; or

(iv) The impact that the procurement may have on higher level mission management (level of selection official) or future procurements.

(b) Procedures. (1) The buying team will determine which of the source selection methodologies is most appropriate to the specific procurement.

(2) The team shall record its rationale for selecting a methodology rather than BVS. Once this decision is made, the team shall no longer function as a MidRange buying team, but shall follow the instructions prescribed in the local procedures for the source selection method.

1871.401–5 Noncompetitive negotiations.

(a) Policy. (1) The RFO may be used as the solicitation method for noncompetitive procurements.

(2) MidRange procedures may be used in noncompetitive acquisitions to the extent they are applicable.

(b) Procedures. (1) Within the dollar thresholds specified in 1871.302(a), posting a synopsis on the NAIS meets the requirement of FAR 5.201 and complies with the notice required by the Competition in Contracting Act. A synopsis is not required if one of the exceptions of FAR 5.202 is met.

(2) The buying team shall require submission of certified cost and pricing data in accordance with FAR 15.804–2.

(3) The technical member of the buying team shall provide technical assistance to the procurement member during evaluation and negotiation of the contractor's offer.

1871.401–6 Commercial items.

(a) Policy. (1) MidRange procedures are considered consistent with the requirements of FAR part 12, Acquisition of Commercial Items. In the event of a

conflict, however, FAR part 12 takes precedence.

(2) MidRange Procedures shall be used for commercial item procurements except that type of contract is limited by FAR 12.207.

(b) Procedures. The offices will be evaluated in accordance with applicable procedures, and shall include consideration of technical, past performance, and price.

1871.402 Preparation of the RFO.

(a) The RFO shall provide all standard information required for the offeror to submit an offer.

(b) The RFO shall contain space for all necessary additional instructions to offerors. As a minimum, the RFO shall contain the following:

(1) Incorporation by reference of all required standard provisions.

(2) A provision notifying offerors that standard Representations and Certifications will be required.

(3) Evaluation and award criteria.

(4) A provision requiring offerors to submit offers on an attached model contract.

(c) Requirements for the content and format of the offer should be the minimum required to provide for proper evaluation. Offerors' formats should be allowed to the maximum extent possible.

(d) Facsimile offers, defined by FAR 14.202–7 and 15.402(i), are authorized for MidRange procurements.

1871.403 Offer preparation period and limitations.

For procurements which are synopsized solely on the NAIS, the buying team should establish deadlines for receipt of offers based on an assessment of the minimum amount of time required to respond to the solicitation. The time required will depend on the complexity of the requirement and amount of cost and technical information required to be submitted. The information required shall be limited to the amount required to conduct a proper evaluation. The offer preparation period established in the RFO shall not be less than 15 calendar days unless the procurement in urgent. For procurements which are synopsized on the NAIS and published in the CBD, FAR requirements for waiting times and deadlines for the receipt of offers apply.

1870.404 Protection of offers.

A facsimile machine(s) shall be dedicated for receipt of offers and placed in a secure location where offers received on it can be safeguarded. All offers submitted shall be recorded, sealed in an envelope marked with the RFO number and taken to the buying team procurement member. Facsimile attendants shall make a good faith effort to inspect the document for completeness and legibility. If the attendant believes there are missing or illegible pages, the document will be promptly referred to the buying team procurement member for notification to the offeror that it should resubmit the offer. The Government shall not assume responsibility for proper transmission.

1871.405 RFO by NAIS (applicable to procurement meeting the thresholds in 1871.302(a)).

(a) Competitive solicitations for MidRange Procurements shall be made available on the NAIS. Solicitations available on the NAIS are exempt from the requirement in FAR 14.203–1 that delivery of the solicitations be made pursuant to FAR 14.205.

(b) For the purposes of FAR 15.402(a), a solicitation posted on the NAIS is a written solicitation.

(c) Solicitations posted on the NAIS in accordance with the regulations in this part are exempt from the requirement in FAR 15.408(a) to issue solicitations using the procedures in FAR part 5.

Subpart 1871.5—Award

1871.501 Representations and certifications.

Upon determination of the successful offeror, the buying team procurement member will determine if the offeror has on file valid Representations and Certifications. If the offeror has not completed the required forms, or they have expired, the offeror will be requested to provide the forms promptly. Should the offeror refuse to provide the

required Representations and Certifications or fail to meet a required condition, the buying team shall reject the offer and proceed to the next highest ranked offeror who is responsive and responsible.

1871.502 Determination of responsible contractor.

Contractor responsibility shall be determined in accordance with FAR part 9.

1871.503 Negotiation documentation.

The prenegotiation memorandum, if required, and the results of negotiation will be in abbreviated form and will be approved by the buying team.

1871.504 Award documents.

Contract award shall be accomplished by contracting officer execution of the contract document and providing a paper copy to the successful offeror. If facsimile documents were used in the evaluation process, the successful offeror may be required to execute original copies of the contract to facilitate legibility during the administration phase of the contract.

1871.505 Notifications to unsuccessful offerors.

For solicitations that were posted on the NAIS, a preaward notice shall be electronically transmitted to the offerors. This notice meets the requirements of FAR 15.1001. However, the preaward notice in a small business set-aside must allow unsuccessful offerors 5 working days to challenge the small business status of the successful offeror.

1871.506 Publication of award.

An award notice shall be posted on the NAIS for 7 calendar days after posting, if the contract offers subcontracting opportunities or if it is subject to the Trade Agreements Act. The information required by FAR 5.207 shall be included in the award notice in abbreviated form.

1871.507 Debreifing of unsuccessful offerors.

The procurement buying team member shall conduct debriefings if requested.

Subpart 1871.6—"Best Value Selection"

1871.601 General.

(a) Best Value Selection (BVS) seeks to select an offer based on the best combination of price and qualitative merit of the offers submitted and reduce the administrative burden on the offerors and the Government.

(b) BVS takes advantage of the lower complexity of MidRange procurements and predefines the value characteristics which will serve as the discriminators among offers. It eliminates the use of area evaluation factors and the highly structured scoring.

1871.602 Specifications for MidRange procurements.

BVS refines the traditional approach to preparing specifications. BVS envisions that the requirement will focus on the end result that is to be achieved and will serve as a statement of the Government's baseline requirements. The offeror will be guided in meeting the Government's needs by a separate set of value characteristics which establish what the Government considers to be valuable in an offer. These value characteristics will be performance based and will permit the selection of the offer which provides better results for a reasonable marginal increase in price.

1871.603 Establishment of evaluation criteria.

(a) The requiring organization will provide, along with the requirement, a list of value characteristics against which the offers will be judged. There is no limit to the number or the type of characteristics that may be specified. The only standard will be whether the characteristic is rationally related to the need specified in the specification. Characteristics may include such factors as improved reliability, innovativeness of ideas, speed of service, demonstrated delivery performance, higher speeds, ease of use, qualifications of personnel, solutions to operating problems, level of service provided on previous similar contracts, or any of numerous other characteristics that may be of value to the Government in satisfying its needs.

(b) Cost and technical will be considered equal in importance. The value characteristics will not be assigned weights.

(c) All subsequent evaluations will consider these characteristics when determining the finalists or making the final selection for award.

1871.604 Evaluation phases.

1871.604–1 Initial evaluation.

(a) Offers will be reviewed to determine if all required information has been provided and the offeror has made a reasonable attempt to present an acceptable offer. Offerors may be contacted only for clarification purposes during the initial evaluation. No further evaluation shall be made of any offer that is deemed unacceptable because:

(1) It does not represent a reasonable effort to address itself to the essential requirements of the RFO or clearly demonstrates that the offeror does not understand the requirements of the RFO;

(2) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure; or

(3) In R&D procurement, a substantial design drawback is evident in the offer and sufficient correction or improvement to consider the offer acceptable would require virtually an entirely new offer.

(b) Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefor and excluded from further consideration.

(c) *Documentation*. If it is concluded that all offers are acceptable, then no documentation is required and evaluation proceeds. If one or more offers are not acceptable, the procurement member of the team will notify the offeror of the rejection and the reasons therefor. The documentation should consist of one or more succinct statements of fact that show the offer is not acceptable.

1871.604–2 Determination of "Finalists".

(a) All acceptable offers will be evaluated against the requirement and the value characteristics. Based on this evaluation, the team will identify the finalists from among the offers submitted. Finalists will include all offers having a reasonable chance of being selected for award, as prescribed in FAR 15.609 for competitive range. Generally, finalists will include the offer having the best price (or lowest most probable cost) and the offer having the highest qualitative merit, plus those determined to have the best combination of price and merit. Offers not qualifying as finalists will be excluded from the balance of the evaluation process.

(b) The selection official may elect to make selection in lieu of determining finalists, provided it can be clearly demonstrated that

(1) Selection of an initial offer(s) will result in the best value for the Government, considering both price and nonprice qualitative criteria;

(2) Discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to the best value offer(s), and

(3) The solicitation contains a provision permitting award without discussions.

(c) *Documentation*. If finalists are identified as discussed in paragraph (a) of this section, the documentation expected and required to result from this phase of evaluation is approximately one-quarter of a page for each finalist. The documentation shall succinctly describe how the value characteristics in the RFO were provided by the offeror and cost/price considerations that caused the offer to qualify as a finalist. The evaluator(s) shall not be required to justify why other offers provided less qualitative merit. It is expected that, should the decision be challenged, the documented reason for selection, when compared with the non-selected offer, shall clearly demonstrate the difference that resulted in non-selection. It is expected and recommended that all informal worksheets used in the evaluation process be included in the contract file. When selection of the successful offeror(s) is made, the buying team shall document the selection in accordance with 1871.604–4(c).

(d) The names of offerors determined to be finalists or selected for contract

award will be electronically transmitted to all offerors. This will serve as notification to those offerors that were not selected for further evaluation (see 1871.505).

1871.604–3 Discussions with "Finalists".

(a) The procurement team member shall lead discussions with each finalist. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.610. It is expected that these discussions will be conducted on an informal basis with each finalist.

(b) After completion of discussions, each finalist shall be afforded an opportunity to revise its offer. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each finalist.

1871.604–4 Selection of "Best Value" Offer.

(a) The procurement team member shall be the source selection official.

(b) The BVS source selection is based on the premise that, if all offers are of approximately equal qualitative merit, award will be made to the offer with the lowest evaluated price (fixed-price contracts) or the lowest most probable cost (cost type contracts). However, the Government will consider awarding to an offeror with higher qualitative merit if the difference in price is commensurate with added value. Conversely, the Government will consider making award to an offeror whose offer has lower qualitative merit if the price (or cost) differential between it and other offers warrant doing so.

(c) *Documentation.* Rationale for selection of the successful offeror shall be recorded in a selection statement which succinctly records the value characteristics upon which selection was made. The statement need not and should not reveal details of the successful offer that are proprietary or business sensitive. Since the value characteristics are expressed in performance terms, the reasons for selection can focus on results to be achieved, rather than the detailed approach the offeror will use. The statement shall also comment on the rationale used to equate cost and qualitative merit. Little or no additional analysis is required when the selected offeror possessed the highest merit and lowest price. When a marginal analysis is made between value characteristics and price (or cost)—in most cases this will be a subjective, integrated assessment of all pertinent factors—specific rationale should be provided to the extent possible. It is expected that the statement will not ordinarily exceed one page. Where the procurement is closely contested, it would be prudent to expand on the rationale provided in the statement.

(d) The name of the offeror(s) selected for award shall be electronically transmitted to the offerors which will serve as a notification to those offerors that were not selected (see 1871.505). The selection statement may be made available at the buying team's discretion.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

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1872.000 Scope of part.

This part prescribes policies and procedures for the acquisition of investigations.

Subpart 1872.1—The Investigation Acquisition System

1872.101 General.

The investigation acquisition system encourages the participation of investigators and the selection of investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate from the acquisition process, but requiring the same management and discipline to assure compliance with statutory requirements and considerations of equity.

1872.102 Key features of the system.

(a)(1) Use of the system commences with a Program Associate Administrator's determination that the investigation acquisition process is appropriate for a program. An Announcement of Opportunity (AO) is disseminated to the interested scientific and technical communities. This solicitation does not specify the investigations to be proposed but solicits investigative ideas which contribute to broad objectives. In order to determine which of the proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the fields represented by the proposals. Care should be taken to avoid conflicts of interest. These evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee serving as staff to the Program Associate Administrator (Program AA), or designee when source selection authority is delegated, reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed.

(2) The Program AA, or designee, selects the proposals that will participate in the program. Once selected, an investigator is assigned appropriate responsibilities relating to the investigation through a contract with the institution. For foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

(b) The AO process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case:

(1) The AO shall be signed by the Program AA and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

(2) An evaluation team shall be formed including recognized peers of the investigators.

(3) A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

(4) A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the AO, cost, and schedule constraints.

(5) A steering committee appointed by the appropriate Program AA shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in this Handbook, and make selection recommendations.

(6) The Source Selection Official shall be the Program AA or the Program AA's designee.

(c) Payloads will be formulated consisting of investigations selected through the AO process and/or other authorized methods.

1872.103 Management responsibilities.

(a) Program AAs are responsible for overseeing the process and for making key decisions essential to the process including:

(1) Determination to use the investigation acquisition system.

(2) Appointment of the steering committee members.

(3) Designation of a staff to assure uniformity in the issuance of the AO and conformity with the required procedures in the evaluation and selection.

(4) Reuse, to the maximum extent practicable, of space hardware and support equipment.

(5) Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

(6) Issuance of the AO.

(7) Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

(8) Assure consideration is given to minorities in the establishment of peer groups, distribution of the AO and in the selection of investigations.

(9) Provide a framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

(b) The Program AA should call upon any required experts throughout the process.

Subpart 1872.2—Applicability of the Process

1872.201 General.

The system used for acquisition of investigations is separate from the agency procedures for acquisition of known requirements. A decision to use this special acquisition process will be based on a determination that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other documentation should discuss the proposed mode of investigations selection.

1872.202 Criteria for determining applicability.

(a) The decision to use the investigations acquisition process as an alternative to the normal planning and acquisition process can only be made after consideration of the conditions which require its use. All of the following conditions should exist before deciding that the system is applicable:

(1) NASA has a general objective which can be furthered through novel experimental approaches. To develop such approaches, NASA wishes to draw upon the broadest possible reservoir of ideas.

(2) Choices must be made among competing ideas in expanding knowledge.

(3) Individual participation of an investigator is essential to exploitation of the opportunity.

(b) The investigations acquisition process shall not be used when any of the following characteristics are present:

(1) The requiring office can define a requirement sufficiently to allow for normal acquisition.

(2) The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

1872.203 Applicable programs and activities.

The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it has been used successfully in the following types of activities:

(a) Exploration and space research flights. (1) Examples include Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

(2) Types of opportunity include:

(i) Participation as a Principal Investigator (PI) responsible for conceiving and conducting a space investigation (This may involve a major piece of instrumentation. In the case of a ''facility'' or ''multiuser'' payload, each PI's responsibilities would ordinarily involve a relatively minor portion of the total instrument.);

(ii) An opportunity to serve on a PI's team as a member or Co-Investigator;

(iii) An opportunity that generally involves the use of data from another investigator's instrument as a guest investigator or guest observer (Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.); and

(iv) A team formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

(3) The investigation acquisition process may be applicable to all types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities.

(b) Minor missions. (1) Examples include research aircraft, sounding rockets, balloons, and minor missions that are generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

(2) Types of opportunity include:

(i) PIs responsible for investigation; and

(ii) Data use or analysis.

(3) Opportunities for participation on minor missions are generally suitable for normal acquisition procedures. The use of an announcement describing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Normal acquisition procedures shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

(c) Operational and operational prototype spacecraft. (1) Examples include spacecraft built for NASA and other agencys' missions.

(2) The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal acquisition procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the investigation acquisition process is not required.

(d) Supporting Research and Technology (SR&T). (1) Examples include

studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

(2) Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal acquisition procedures should be used. A general announcement of area of interest could be made when greater participation is deemed advisable.

1872.204 Approval.

The Program AA is responsible for determining whether or not to use the investigations acquisition process. Normally on major projects, or when a project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

Subpart 1872.3—The Announcement of Opportunity

1872.301 General.

An announcement of opportunity (AO) is characterized by its generality. However, it is essential that the AO contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the AO will depend on the objective. The purpose is to get adequate information to assess the relevance, merit, cost, and management requirements without overburdening the proposer.

1872.302 Preparatory effort.

(a) Headquarters offices and the responsible project installation must consult prior to release of the AO.

(b) The program office shall:

(1) Synopsize the AO in the Commerce Business Daily prior to the time of release;

(2) Determine if there is instrumentation or support equipment available which may be appropriate to the AO with all necessary background data considered essential for use by a proposer;

(3) Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the AO; and

(4) Assure mandatory provisions are contained in the AO.

(c) Other methods of dissemination of the AO may also be used, such as the use of press releases, etc. When possible, the AO should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

1872.303 Responsibilities.

(a) The program office originator is responsible for the content of the AO and coordination with concerned Headquarters offices and field installations. All personnel involved in the evaluation of proposals are responsible for familiarizing themselves and complying with this part and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

(b) The Program Office is also responsible for coordinating the AO with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Acquisition prior to issuance (see NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs).

(c) Concurrence of the Office of Acquisition is required before issuance of an AO.

1872.304 Proposal opportunity period.

(a) The AO must accommodate to the maximum extent practicable opportunities afforded by the Shuttle/Spacelab flights. The following methods may be used to enable an AO to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

(1) The AO may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months

most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

(2) The AO may be issued establishing a single proposal submission date. However, the AO could provide that NASA amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired within the AO objectives.

(3) The AO may provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the AO, and payload funding and availability.

(b) Generally, a core payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended AOs. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original AO but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

(c) Any proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see 1872.403–1(e)), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

1872.305 Guidelines for Announcement of Opportunity.

(a) The AO should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each AO will identify the originating program office and be numbered consecutively by calendar year, e.g., OA–1–95, OA–2–95; OLMSA–1–95; OSS–1–95; etc. The required format and detailed instructions regarding the contents of the AO are contained in 1872.705.

(b) The General Instructions and Provisions, Appendix A (see 1872.705–1) are necessary to accommodate the unique aspects of the AO process. Therefore, they must be appended to each AO.

(c) At the time of issuance, copies of the AO must be furnished to Headquarters, Office of Acquisition (Code HS) and Office of General Counsel (Code GK).

(d) Proposers should be informed of significant departures from scheduled dates for activities related in the AO.

1872.306 Announcement of Opportunity soliciting foreign participation.

Proposals for participation by individuals outside the U.S. shall be submitted in the same format (excluding cost plans) as U.S. proposals, typewritten in English, and reviewed and endorsed by the appropriate foreign governmental agency. If letters of ''Notice of Intent'' are required, the AO should indicate that they be sent to Headquarters, Office of External Relations, International Relations Division (Code IR). Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guidelines applicable to foreign proposers are contained in the Management

Plan Section of Appendix B (see 1872.705–and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

1872.307 Guidelines for proposal preparation.

While not all of the guidelines outlined in Appendix B will be applicable in response to every AO, the investigator should be informed of the relevant information required. The proposal may be submitted on a form supplied by the Program Office. However, the proposal should be submitted in at least two sections:

(a) Investigation and Technical Section; and (b) Management and Cost Section as described in Appendix B.

Subpart 1872.4—Evaluation of Proposals

1872.401 General.

(a) The evaluation process considers the aspects of each proposal by the following progressive sorting:

(1) A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in 1872.403. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the AO objectives.

(2) Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the project office at the installation responsible for the project.

(3) Final reviews are performed by the program office and the steering committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the AO's objectives within programmatic constraints.

(b) The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan should be developed before issuance of the AO. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each AO. A fuller discussion of the evaluation and selection process is included in the following sections of this subpart.

1872.402 Criteria for evaluation.

(a) Each AO must indicate those criteria which the evaluators will apply in evaluating a proposal. The relative importance of each criterion must also be stated. This information will allow investigators to make informed judgments in formulating proposals that best meet the stated objectives.

(b) Following is a list of general evaluation criteria appropriate for inclusion in most AOs:

(1) The scientific, applications, and/or technological merit of the investigation.

(2) The relevance of the proposed investigation to the AO's stated scientific, applications, and/or technological objectives.

(3) The competence and experience of the investigator and any investigative team.

(4) Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

(5) The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

(6) Cost and management aspects will be considered in all selections.

(7) Other or additional criteria may be used, but the evaluation criteria must be germane to the accomplishment of the stated objectives.

(c) Once the AO is issued, it is essential that the evaluation criteria be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the AO will be amended, and all known recipients will be informed of the change and given an adequate

opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

1872.403 Methods of evaluation.

Alternative methods are available to initiate the evaluation of proposals received in response to an AO. These are referred to as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed to categorize the proposals. Following categorization, those proposals still in consideration will be processed to the selection official.

1872.403–1 Advisory subcommittee evaluation process.

(a) Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals. One or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the AO's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

(1) The subcommittee normally should be established on an ad hoc basis.

(2) Qualifications and acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations are not sufficient qualifications.

(3) The executive secretary of the subcommittee must be a full-time NASA employee.

(4) Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

(5) Care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

(6) The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee.

(b) It may not be possible to select a subcommittee fully satisfying all of the conditions described in paragraph (a) of this section. It is the responsibility of the nominating and appointing officials to make trade-offs, where necessary, among the criteria in paragraph (a) of this section. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

(c) Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, ''Establishment, Operation, and Duration of NASA Advisory Committees.'' The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

(d) It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process, even where several or

all of the members have served previously. This briefing of subcommittee members should include:

(1) Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

(2) Review of the program goals, AO objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

(3) Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

(4) Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific and/or technical merit in accordance with the evaluation criteria.

(5) Instruction for documentation of deliberations and categorizations of the subcommittee.

(6) Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Supplemental Standards of Ethical Conduct for employees of the National Aeronautics and Space Administration, 5 CFR part 6901, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

(7) Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requestor demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

(e) The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

(1) Category I—Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the AO's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

(2) Category II—Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

(3) Category III—Scientifically and technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

(4) Category IV—Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

(f) A record of the deliberations of the subcommittee shall be prepared by

the assigned executive secretary and shall be signed by the Chairperson. The minutes shall contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

1872.403–2 Contractor evaluation process.

(a) The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an AO requires the approval of the Program AA. Prior to the use of this method, discussion should be held with the Office of Acquisition.

(b) It is NASA policy to avoid situations in the acquisition process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

(1) Is given an unfair competitive advantage over other companies with respect to future NASA business;

(2) Is placed in position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

(3) Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

(c) To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will be incorporated into the contract:

(1) No employee of the contractor will be permitted to propose in response to the AO;

(2) The ''Limitation on Future Contracting'' clause contained in 1852.209–71 and the conditions set forth in 1815.413–2 Alternate II will be included in all such contracts; and

(3) Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

(d) The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

(e) The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the contractor in relation to the panels will be as follows:

(1) The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

(2) These panels will be composed of scientists and specialists qualified to evaluate the proposals;

(3) The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

(4) The contractor will report each panel's membership to NASA for approval; and

(5) The contractor must make all the necessary arrangements with the panel members.

(f) The evaluation support by the contractor's panels of experts will be accomplished as follows:

(1) The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria in the AO and will record their strengths and weaknesses;

(2) The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon request, the contractor shall provide all such records to NASA;

(3) The chairperson of each panel shall certify that the evaluation report correctly represents the findings of the review panel; and

(4) A final report will be submitted as provided in the contract.

(g) A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in 1872.403–1(e)(1), Advisory Subcommittee Evaluation Process. A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

1872.403–3 Government evaluation process.

(a) The Program AA may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

(b) Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the AO evaluation criteria. It is important that a subcommittee's evaluation not be influenced by others either within or outside of NASA.

(c) The subcommittee members will not contact the proposers for additional information.

(d) The subcommittee members will classify the proposals in accordance with the four categories indicated in 1872.403–1(e)(1). Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

1872.404 Engineering, integration, and management evaluation.

(a) The subcommittee responsible for categorization of each proposal in terms of its scientific applications, or technical merit should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

(b) This information should be provided at the discretion of the Headquarters Program Office by the Project Office at the installation. This information can be in general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

(c) Following categorization, the Project Office shall evaluate proposals in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center.

(d) In assessing proposed costs, the evaluation must consider:

(1) The investigation objective.

(2) Comparable, similar or related investigations.

(3) Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

(4) Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

(e) The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

(f) Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the inter-faces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

(1) Whether the instrument requires further definition;

(2) Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

(3) Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

(4) Whether integration of the instrument is feasible.

(g) In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: workload—present and future related to capacity and capability; past experience; management approach and organization; e.g.:

(1) With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

(2) A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

(3) The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

1872.405 Program office evaluation.

(a) A Program Office responsible for the project or program at Headquarters will receive the evaluation of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations should facilitate sound selection decisions by the Program AA. Three sets of recommendations result from the Program Office evaluation:

(1) Optimum payload or program of investigations, or options for alternative payloads or programs.

(2) Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

(3) Upon consideration of the guidelines contained in 1872.502(a)(3), recommending responsibility for instrument development.

(b) The Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an appropriate probability of technical success within the estimated probable cost. The Headquarters Program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

(c) It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development.

Tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

(1) The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

(2) The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

(3) The investigative area is critical to the program and competitive approaches need to be developed further to allow selection of the optimum course.

(d) Based on evaluation of these considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program AA responsible for selection:

(1) The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

(2) The expected costs required to develop instrumentation to the point of ''demonstrated capability.''

(3) The risk involved in added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

(4) Identification of opportunities, if any, for inclusion of such investigations in later missions.

(e) In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a final commitment to the investigation.

(f) As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acquisition determination are discussed in 1872.502(a)(3).

(g) The range of options for responsibility for the instrumentation consists of:

(1) Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to provide the instrumentation for integration.

(2) Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(i) Provision of instrument specifications.

(ii) Approval of specifications.

(iii) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for the investigation.

(iv) Participation in design reviews and other appropriate reviews.

(v) Review and concurrence in changes resulting from design reviews.

(vi) Participation in configuration control board actions.

(vii) Advice in definition of test program.

(viii) Review and approval of test program and changes thereto.

(ix) Participation in conduct of the test program.

(x) Participation in calibration of instrument.

(xi) Participation in final inspection and acceptance of the instrument.

(xii) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(xiii) Participation in the development and support of the operations plan.

(xiv) Analysis and interpretation of data.

(h) The Principal Investigator should as a minimum:

(1) Approve the instrument specification.

(2) Advise the project manager in development and fabrication.

(3) Participate in final calibration.

(4) Develop and support the operations plan.

(5) Analyze and interpret the data.

(i) The Project Installation is responsible for implementing the program or project and should make recommendations concerning the role for the Principal Investigators. The Program AA will determine the role, acting upon the advice of the Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an appeal to the Program AA and the right to withdraw from participation.

(j) The Program Office should make a presentation to the Steering Committee with supporting documentation on the decisions to be made by the responsible Program AA.

1872.406 Steering committee review.

(a) The most important role of the Steering Committee is to provide a substantive review of a potential payload or program of investigations and to recommend a selection to the Program AA. The Steering Committee applies the collective experience of representatives from the program and discipline communities and offers a forum for discussing the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the process. The Steering Committee is responsible for assuring adherence to required procedures. Lastly, it is the forum where discipline objectives are weighed against program objectives and constraints.

(b) The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

(1) Review compliance with procedures governing application of the AO process.

(2) Ensure that adequate documentation has been made of the steps in the evaluation process.

(3) Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program AA.

(c) The Purpose in exercising the first of the responsibilities in paragraph (b) of this section is to ensure equity and consistency in the application of the process. The Steering Committee is intended to provide the necessary reviews and coordination inherent in conventional acquisition practices.

(d) The second and third responsibilities of the Steering Committee in paragraph (b) are technical. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office for completeness and appropriateness before forwarding to the Program AA. Most important in this review are:

(1) Degree to which results of evaluations and recommendations follow logically from the criteria in the AO.

(2) Consistency with objectives and policies generally beyond the scope of Project/Program Offices.

(3) Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

(4) Sufficiency of reasons stated for determining responsibilities for instrument development.

(5) Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

(6) Sufficiency of reasons for classifying proposed investigations in their respective categories.

(7) Fair treatment of all proposals.

(e) The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

1872.407 Principles to apply.

(a) 1872.406 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of

review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several evaluative steps, but it may not be essential to consider the principles of the several evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this subpart 1872.4 as a guide.

(b) Significant deviations from the provisions of this part 1872 must be fully documented and be approved by the Program AA after concurrence by the Office of General Counsel and Office of Acquisition.

Subpart 1872.5—The Selection Process

1872.501 General.

The Program AA is responsible for selecting investigations for contract negotiation. This decision culminates the evaluations and processes that can be summarized as follows:

Evaluation stage	Principal emphasis	Results
Contractor (when authorized)	Summary evaluation (strengths and weaknesses).	Report to Subcommittee.
Subcommittee individual	Science and technological relevance, value, and feasibility.	Categorization of proposals.
Project Office	Engineering/cost/integration/management assessment.	Reports to Subcommittee and Program Office.
Program Office	Consistency with Announcement and program objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee	Logic of proposed selections and compliance with proper procedures.	Recommendations to Program Associate Administrator.

1872.502 Decisions to be made.

(a) The selection decisions by the Program AA constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the AO's objectives, and their consonance with budget constraints to make the following decisions:

(1) Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(i) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(ii) Assurance that the evaluation criteria were applied consistently to all proposed investigations.

(iii) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(iv) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

(2) Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

(3) Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source or whether the requirement should be competitively procured. The following guidelines apply:

(i) The hardware required should be subjected to competitive solicitation where it is clear that the capability is not sufficiently unique to justify sole source acquisition.

(ii) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution,

(A) When the fabricator's proposal contains technical data that are not

available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal;

(B) When the fabricator offers unique capabilities that are not available from another source;

(C) When the selection official determines that the proposed hardware contributes so significantly to the value of the investigator's proposal as to be an integral part of it.

(iii) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

(iv) If a NASA employee submits a proposal as a principal investigator, any requirement for hardware necessary to perform the investigation must either be competed by the installation acquisition office or a justification must be written, synopsized, and approved in accordance with the requirements of FAR and the NASA FAR Supplement.

(4) Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(i) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(ii) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(iii) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

(5) Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

(b) In the process of making the determinations described in paragraph (a)(1) of this section, the Program AA may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, the Program AA may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program AA's decision.

1872.503 The selection statement.

Upon completion of deliberations, the responsible Program AA shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

(a) The general and specific evaluation criteria and relative importance used for the selection.

(b) The categorizations provided by the subcommittee and the rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

(c) A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a combination with other investigators.

(d) The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

(e) An indication of the plan and acquisition using the regular acquisition processes, if the Principal Investigator is not to acquire the hardware.

(f) A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

(g) A statement indicating use of Government-owned space flight hardware and/or support equipment.

1872.504 Notification of proposers.

(a) It is essential that investigators whose proposals have no reasonable chance for selection be so apprised as soon as practicable. The responsible Program Office will, upon such determination, notify investigators of that fact with the major reason(s) why the

proposals were so considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing.

(b) Letters of notification will be sent to those Principal Investigators selected to participate. This letter should not commit the agency to more than negotiations for the selected investigation, but it should indicate the decision made and contain:

(1) A concise description of the Principal Investigator's investigation as selected, noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

(2) The nature of the selection, i.e., whether it should be considered final or tentative requiring additional hardware or cost definition.

(3) A description of the role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

(3) Identification of the principal technical and management points to be treated in subsequent negotiations.

(5) Any rights to be granted on use of data, publishing of data, and duration of use of the data.

(6) Where applicable, indication that a foreign selectee's participation in the program will be arranged between the International Affairs Division, Office of External Relations, and the foreign government agency which endorsed the proposal.

(c) In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible International Affairs Division, Office of External Relations, addressing the following:

(1) The scientific technological objective of the effort.

(2) The period of time for the effort.

(3) The responsibilities of NASA and of the sponsoring governmental agency; these may include:

(i) Provision and disposition of hardware and software.

(ii) Responsibilities for reporting, reduction and dissemination of data.

(iii) Responsibilities for transportation of hardware.

(4) Any additional information pertinent to the conduct of the experiment.

(d) Using the information provided above, the International Affairs Division, Office of External Relations will negotiate an agreement with the sponsoring foreign agency.

(e) Notices shall also be sent to those proposers not notified pursuant to paragraphs (a) through (d) of this section, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time as those selected. Other agency notifications and press release procedures will apply, as appropriate.

1872.505 Debriefing.

It is the policy to debrief, if requested, unsuccessful proposers of investigations in accordance with FAR 15.1004. The following shall be considered in arranging and conducting debriefings:

(a) Debriefing shall be done by an official designated by the responsible Program AA. Any other personnel receiving requests for information concerning the rejection of a proposal shall refer to the designated official.

(b) Debriefing of unsuccessful offerors shall be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

(c) Material discussed in debriefing shall be factual and consonant with the documented findings of several stages of the evaluation process and the selection statement.

(d) The debriefing official shall advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

(e) The debriefing official shall not discuss other unsuccessful proposals, rankings, votes of members, or attempt to make a point-by-point comparison with successful proposals.

(f) A memorandum of record of the debriefing shall be provided the Chairperson of the Steering Committee.

Subpart 1872.6—Payload Formulation

1872.601 Payroll formulation.

(a) Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through AOs, those generated by in-house research, unsolicited proposals and those derived from agreements between NASA and external entities. However, it is anticipated that the primary source of NASA payload elements will be the AO process. Generally, proposals for payload elements submitted outside the AO process will not be selected if they would have been responsive to an AO objective.

(b) Payload elements for STS flights fall into two major categories. ''NASA or NASA-related'' payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. ''Non-NASA'' payload elements are those which require only STS operation services from NASA and interface with NASA through the Office of Space Flight.

(c) In general, a Program Office will be designated responsibility for formulating the ''NASA or NASA-related'' portion of an STS payload. The Office of Space Flight will be responsible for formulating the ''non-NASA'' portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type. Resource allocation for mixed missions will be determined by the Program Office and the Office of Space Flight.

Subpart 1872.7—Acquisition and Other Considerations

1872.701 Early involvement essential.

(a) The distinctive feature of the AO process is that it is both a program planning system and an acquisition system in one procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Acquisition is involved with the purchase of property and services to carry out the selected investigations.

(b) Because of both the programmatic and multi-functional aspects of the AO process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and complies with statutory requirements and acquisition policy.

(c) The planning, preparation and selection schedule for the investigation should commence early enough to meet statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

1872.702 Negotiation, discussions, and contract award.

(a) The AO shall be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the AO mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45 days before the date set for receipt of proposals).

(b) Significant items for consideration after receipt of proposals:

(1) Late proposals—The policy on late proposals contained in 1815.412 is applicable. Potential investigators should be informed of this policy. In the AO context, the selection official or designee will determine whether a late proposal will be considered.

(2) Competitive considerations. (i) The proposals submitted in response to the AOs are not necessarily fully comparable. However, all proposals within the scope of an opportunity must be evaluated in accordance with the criteria in the AO.

(ii) Cost must be considered in the evaluation if costs are involved in the investigation. General cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories into which the subcommittee places proposals.

(iii) Further information should be obtained, as necessary, by the Installation Project Office and/or any other

evaluation group authorized by the selection official and from the investigators whose proposals are being considered. This is similar to the acquisition procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Good judgment is required by in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be prepared of the primary points covered in the written and oral discussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(iv) During the conduct of discussions, all proposers being considered shall be offered an equitable opportunity to submit cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should note compliance of the investigators with that cut-off date.

(c) Significant items for consideration before award:

(1) Issuance of a Request for Proposal (RFP)—A formal RFP should not be issued to obtain additional information on proposals accepted under the AO process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

(2) Selection of Investigator/Contractor—The selection decision of the Program AA approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

1872.703 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement.

The AO process supplants normal acquisition procedures only to the extent necessary to meet the distinctive features of the process. This process is not intended to conflict with any established statutory requirements.

1872.704 Other administrative and functional requirements.

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract.

1872.705 Format of Announcement of Opportunity (AO).

Use the following format instructions when drafting AOs:

OMB APPROVAL NUMBER 2700–0085

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Washington, DC 20546

Announcement of Opportunity

AO No. _____ (Issuance Date)

(Descriptive Heading)

I. DESCRIPTION OF THE OPPORTUNITY

This section should set forth the basic purpose of the AO and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists. In those instances where proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, a qualifying statement should be included to indicate that this AO does not constitute an obligation for the Government to carry the effort to completion.

II. AO OBJECTIVES

This section will give a succinct statement of the specific scientific, applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. BACKGROUND

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader understand the relevance of the opportunity.

IV. PROPOSAL OPPORTUNITY PERIOD

This section should provide the proposal opportunity period(s). The following methods may be used individually or in conjunction for establishing the proposal opportunity period(s):

(a) The AO may be issued establishing a single date by which proposals may be received. However, the AO could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired.

(b) The AO may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the AO.

(c) The AO may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. REQUIREMENTS AND CONSTRAINTS

(a) This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flight-worthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user for observer, need for preliminary or raw data analysis and interim reports. It will specify the planned period (time) for data analysis to be used for budgeting. It will provide any additional information necessary for a meaningful proposal.

(b) When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the AO should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. PROPOSAL SUBMISSION INFORMATION

(a) Preproposal Activities—In this section, the AO will indicate requiremets and activities such as the following:

(1) Submittal of ''Notice of Intent'' to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit ''Notice of Intent.''

(2) Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and

whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

(3) The name and address of the scientific or technical contact for questions or inquiries.

(4) Any other preproposal data considered necessary.

(b) Format of Proposals—This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

(1) Proposal—The AO should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections; (i) Investigation and Technical Section; and (ii) Management and Cost Section.

(2) Signatory—The proposal must be signed by an institutional official authorized to ensure institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

(3) Quantity—The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

(4) Submittal Address—Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, OFFICE OF (PROGRAM)

Code _____

AO No. _____

Washington, DC 20546

(5) Format—To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each AO. The number of pages, page size, and restriction on photo reduction, etc., may be included. The format contained in Appendix C can be used as a guide. Proposers may be requested to respond to all of the items or the AO may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the AO or an appropriate form developed.

(c) Additional Information—This section may be used to request or furnish data necessary to obtain clear proposals that should not require further discussions with the proposer by the evaluators. Other pertinent data could also be included, such as significant milestones.

(d) Foreign Proposals—The procedures for submission of proposals from outside the U.S. are contained in Appendix B, ''General Instructions and Provisions.'' This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations at the same time the proposal is submitted.

(e) Cost Proposals (U.S. Investigators Only)—This section defines any special requirements regarding cost proposals of domestic investigators. Reference than should be made to the cost proposal certifications indicated in Appendix B, ''General Instructions and Provisions.''

VII. PROPOSAL EVALUATION, SELECTION, AND IMPLEMENTATION

(a) Evaluation and Selection Procedure.

(1) This section should notify the proposers of the evaluation process.

(2) For example, a statement similar to the following should be included:

''Proposals received in response to this AO will be reviewed by a subcommittee appointed by the (appropriate Program AA). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this AO and so categorize the proposals. Those proposals with are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations.''

(b) Evaluation Criteria.

(1) This section should indicate that the selection proposals which best meet the specific scientific, applications, and/or technological objectives, stated in the AO, is the aim of the solicitation. This section should list the criteria to be used in the evaluation of proposals and indicate their relative importance. See NASA FAR Supplement 1872.402 for a listing of criteria generally appropriate.

(2) This section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. SCHEDULE

This section should include the following, as applicable:

(a) Preproposal conference date.

(b) Notice of Intent submittal date.

(c) Proposal submittal date(s).

(d) Target date for announcement of selections.

IX. APPENDICES

(a) General Instructions and Provisions (must be attached to each AO).

(b) Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator

for (Program)

1872.705–1 Appendix A: General Instructions and Provisions

Include the following in all Announcements of Opportunity:

I. INSTRUMENTATION AND/OR GROUND EQUIPMENT

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that becomes available, with or without modification, that will meet the investigative objectives.

II. TENTATIVE SELECTIONS, PHASED DEVELOPMENT, PARTIAL SELECTIONS, AND PARTICIPATION WITH OTHERS

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. SELECTION WITHOUT DISCUSSION

The Government reserves the right to reject any or all proposals received in response to this AO when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. FOREIGN PROPOSALS

See Appendix B, Management Plan and Cost Plan, paragraph (a)(3).

V. TREATMENT OF PROPOSAL DATA

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should place the following notice on the title page

of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. Information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice. To prevent inadvertent disclosure, proposal data shall not be included in submissions (e.g. final reports) that are routinely released to the public.

RESTRICTION ON USE AND DISCLOSURE OF PROPOSAL AND QUOTATION INFORMATION (DATA)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. STATUS OF COST PROPOSALS (U.S. PROPOSALS ONLY)

The investigator's institution agrees that the cost proposal is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution may be required to resubmit cost information in accordance with FAR 15.8.

VII. LATE PROPOSALS

The Government reserves the right to consider proposals or modifications thereof received after the date indicated, should such action be in the interest of the Government.

VIII. SOURCE OF SPACE TRANSPORTATION SYSTEM INVESTIGATIONS

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources.

IX. DISCLOSURE OF PROPOSALS OUTSIDE GOVERNMENT

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. EQUAL OPPORTUNITY (U.S. PROPOSALS ONLY)

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

EQUAL OPPORTUNITY

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO–1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(h) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(i) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(j) The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(k) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. PATENT RIGHTS

(a) For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at 1852.227–70, ''New Technology,'' shall apply. Such contractor may, in advance of contract, request waiver of rights as set forth in the provision at 1852.227–71, ''Request for Waiver of Rights to Inventions.''

(b) For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227–11, ''Patent Rights—Retention by the Contractor (Short Form)'' (as modified by 1852.227–11), shall apply.

1872.705–2 Appendix B: Guidelines for Proposal Preparation.

The following guidelines apply to the preparation of proposals in response to an AO. The material is a guide for the proposer and not intended to be encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should provide information relative to those items applicable or as required by the AO.

I. COVER LETTER

A letter or cover page should be forwarded with the proposal signed by the investigator and an official by title of the investigator's organization who is authorized to commit the organization responsible for the proposal.

II. TABLE OF CONTENTS

The proposal should contain a table of contents.

III. IDENTIFYING INFORMATION

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

INVESTIGATION AND TECHNICAL PLAN

(a) Investigation and Technical Plan

The investigation and technical plan generally will contain the following:

(1) Summary. A concise statement about the investigation, its conduct, and the anticipated results.

(2) Objective and Significant Aspects. A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

(3) Investigation Approach.

(i) Fully describe the concept of the investigation.

(ii) Detail the method and procedure for carrying out the investigation.

(b) Instrumentation

This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

(1) Instrument Description—This section should fully describe the instrument and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

(2) Instrument Integration—This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab, Shuttle Orbiter, Space Station, etc. These include, but are not limited to, volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluent); data processing requirements.

(3) Ground Operations—This section should identify requirements for prelaunch or post-launch ground operations support.

(4) Flight Operations—This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe real-time ground support requirements and indicate any special equipment or skills required of ground personnel.

(c) Data Reduction and Analysis

A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of Interior, Sioux Falls, SD, for earth observations data.

(d) Orbiter Crew and/or Payload Specialist Training Requirement

A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the

task duration and equipment involved. Indicate special training necessary to provide the crew members or payload specialist(s) with the capability for performing the aforementioned tasks.

MANAGEMENT PLAN AND COST PLAN

(a) Management Plan

The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

(1) Management

(i) The management plan sets forth the approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

(ii) The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

(iii) The plan should describe the proposed method of instrument acquisition. It should include the following, as applicable.

(A) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(B) Method and basis for the selection of the instrument fabricator.

(C) Unique capabilities of the instrument fabricator that are not available from any other source.

(D) Characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(E) Availability of personnel to administer the instrument contract and technically monitor the fabrication.

(F) Status of development of the instrument.

(G) Method by which the investigator proposes to:

(*a*) Prepare instrument specifications.

(*b*) Review development progress.

(*c*) Review design and fabrication changes.

(*d*) Participate in testing program.

(*e*) Participate in final checkout and calibration.

(*f*) Provide for integration of instrument.

(*g*) Support the flight operations.

(*h*) Coordinate with co-investigators, other related investigations, and the payload integrator.

(*i*) Assure safety, reliability, and quality.

(*j*) Provide required support for Payload Specialist(s), if applicable.

(H) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

(2) Facilities and Equipment

All major facilities, laboratory equipment, and ground-support equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

(3) Additional Guidelines Applicable to Non-U.S. Proposers Only

The following guidelines are established for foreign responses to NASA's AO. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

(i) Where a ''Notice of Intent'' to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the AO and

send a copy of this letter to the International Relations Division, Office of External Relations, Code IR, NASA, Washington, DC 20546, U.S.A.

(ii) Unless otherwise indicated in the AO, proposals will be submitted in accordance with this Appendix excluding cost plans. Proposals should be typewritten and written in English.

(iii) Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates that the proposal merits careful consideration by NASA and that, if the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

(iv) Proposals including the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each AO. These documents should be sent to:

National Aeronautics and Space Administration, International Relations Division, Code IR, Office of External Relations, Washington, DC 20546, U.S.A.

(v) Those proposals received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

(vi) Shortly after the deadline for each AO, NASA's International Relations Division will be advised the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgment will be provided to each proposer.

(vii) Successful and unsuccessful proposers will be contacted directly by the NASA Program Officer coordinating the AO. Copies of these letters will be sent to the sponsoring Government agency.

(viii) NASA's International Relations Division will then begin making the arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(A) A letter of notification by NASA.

(B) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(C) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

(b) Cost Plan (U.S. Investigations Only)

The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

(1) The categories of cost should include the following:

(i) Director Labor—List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

(ii) Overhead—Include indirect costs. Usually this is in the form of a percentage of the direct labor costs.

(iii) Materials—This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

(iv) Subcontracts—List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

(v) Special Equipment—Include a list of special equipment with lead and/or development time.

(vi) Travel—List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

(vii) Other Costs—Costs not covered elsewhere.

(viii) General and Administrative Expense—This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

(ix) Fee (if applicable).

(2) Separate schedules, in the above format, should be attached to show total cost allocable to the following:

(i) Principal Investigator and other Investigators' costs.

(ii) Instrument costs.

(iii) Integration costs.

(iv) Data reduction and analysis including the amount and cost of computer time.

(e) If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

1872.705–3 Appendix C: Glossary of Terms and Abbreviations Associated with Investigations.

Advisory Committee Subcommittee—Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO)—A document used to announce opportunities to participate in NASA programs.

AO Process—A term used to describe the program planning and acquisition procedure used to acquire investigative effort, initiated by an AO.

Categorization—The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; Category III—sound investigations requiring further development; Category IV—rejected.

Co-Investigator (Co-I)—Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation. A NASA employee can participate as a Co-I on an investigation proposed by a private organization.

Data Users—Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments—Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR)—The regulations governing the conduct of acquisition.

Flight—That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle ''flight'' means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigaton—Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity—A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators—Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers

Investigaton—Used interchangeably with ''Experiments.''

Investigation Team—A group of investigators collaborating on a single investigation.

Investigator—A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission—The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement—Acquisition regulations promulgated by NASA in addition to the FAR.

NMI—NASA Management Instruction.

Notice of Intent—A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload—A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group—A gathering of experts in related disciplinary areas convened

as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review—The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in this Handbook.

Principal Investigator (PI)—A person who conceives an investigation and is responsible for carrying it out and reporting its results. A NASA employee can participate as a PI only on a government-proposed investigation.

Program—An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project—Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office—An office generally established at a NASA field installation to manage a project.

Selection Official—The NASA official designated to determine the source for award of a contract or grant.

Space Facility—An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee—A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office—An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee—An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T)—The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team—A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader—The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member—A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.

CHAPTER 19—UNITED STATES INFORMATION AGENCY

(Parts 1900 to 1999)

EDITORIAL NOTE: For a waiver document affecting chapter 19, see 56 FR 22661, May 16, 1991.

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SUBCHAPTER A—GENERAL

PART 1901—UNITED STATES INFORMATION AGENCY ACQUISITION REGULATION SYSTEM

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1901.403 Individual deviations.
1901.404 Class deviations.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.
1901.602 Contracting officers.
1901.602–1 Authority.

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

SOURCE: 50 FR 13200, Apr. 3, 1985, unless otherwise noted.

1901.000 Scope of part.

This part describes the method by which the United States Information Agency implements and supplements the Federal Acquisition Regulation and contains policies and procedures that implement and supplement Chapter 1 of the Federal Acquisition Regulation (48 CFR).

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

This subpart establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of the Federal Acquisition Regulations System (48 CFR chapter 19) and states the relationship of the IAAR to the Federal Acquisition Regulation (FAR), 48 CFR chapter 1.

1901.102 Authority.

The USIA Acquisition Regulation is prescribed by the Director of the United States Information Agency pursuant to the authority of the Reorganization Plan No. 2 of 1977 and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

1901.103 Applicability.

Except where a deviation is specifically authorized in accordance with subpart 1901.4 or otherwise authorized by law, the FAR and the IAAR govern all USIA acquisitions within the United States.

1901.104 Issuance.

1901.104–1 Publication and code arrangement.

(a) The IAAR is published in the FEDERAL REGISTER and, in cumulative form in the Code of Federal Regulations (CFR).

(b) The IAAR is issued as chapter 19 of title 48, CFR.

1901.104–2 Arrangement of regulations.

The IAAR uses the same numbering system and arrangement used in the FAR. Where the IAAR implements the FAR, it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, numbers beginning with 70 or higher are assigned to the IAAR supplementing part. Where the subject matter is the FAR requires no implementation, the IAAR contains no corresponding part.

Subpart 1901.4—Deviations From the FAR

1901.403 Individual deviations.

Deviations from the IAAR or the FAR in individual cases shall be authorized by the Agency Procurement Executive or a designee unless FAR 1.405(e) is applicable. The request shall cite the specific part of the IAAR or

FAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reason for the action requested.

1901.404 Class deviations.

Class deviations affecting more than one contracting action shall be authorized only by the Agency Procurement Executive, unless FAR 1.405(e) is applicable, and shall be subject to the limitations set forth in FAR 1.404. Requests shall include the same information as cited in 1901.403.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

The Director, Office of Contracts, is designated the Agency Procurement Executive. The Agency Procurement Executive is delegated the full delegable authority of the Director of this Agency with respect to the acquisition of goods and services by contract and such other methods as may be prescribed in the FAR. The Agency Procurement Executive is delegated overall responsibility by the Director for the Agency's contracting activities.

1901.602 Contracting officers.

1901.602–1 Authority.

USIA Contracting Officers designated by name on Certificates of Appointment by the Agency Procurement Executive are authorized to enter into, administer, and terminate contracts and make related determinations and findings, subject to all requirements and limitations set forth in the Certificate of Appointment. A list of USIA employees who have been appointed as Contracting Officers and the limits of their authority is available from the Policy and Procedures Staff, Office of Contracts.

PART 1902—DEFINITIONS OF WORDS AND TERMS

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

SOURCE: 50 FR 13202, Apr. 3, 1985, unless otherwise noted.

Subpart 1902.1—Definitions

1902.101 Definitions.

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

Agency means the United States Information Agency, acting through any of its duty authorized officials.

Agency Procurement Executive means the Director, Office of Contracts.

AR/CO means Authorized Representative of the Contracting Officer (see 1942.202–70).

Contracting activity means the Office of Contracts, which has the responsibility to contract for the acquisition of supplies and services (including construction).

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

Purchasing Activity means an office with one or more Level I or Level II Small Purchases Contracting Officer(s) exercising limited redelegations of contracting officer authority.

USIA means the United States Information Agency.

PART 1903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

Sec.
1903.602 Exceptions.
1903.670 Contracts between USIA and former employees.

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

SOURCE: 50 FR 13202, Apr. 3, 1985, unless otherwise noted.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

To avoid potential conflicts of interest or the appearance of preferential treatment, it is USIA policy not to award contracts, purchase orders, grants or cooperative agreements to Government employees or their family members or business concerns owned or controlled by Government employees or their family members. Exceptions to this policy must be approved by the Agency Director or Agency Procurement Executive and supported by written Findings and Determination. A contract with an employee for services may result in violation of the dual salary compensation statutes (5 U.S.C. 5533). Nothing in this paragraph is intended to render inapplicable the conflict of interest prohibition set out in 18 U.S.C. 208.

1903.670 Contracts between USIA and former employees.

To avoid conflicts of interest or the appearance of preferential treatment, purchase orders, contracts, grants or cooperative agreements with former employees of USIA, or with firms in which former employees or their family members are known to have controlling interest, may be entered into within two years following separation from employment only with the written approval of the Agency Director. A written justification shall be made a part of the file. The justification must address the issue of conflict of interest and conclude that it does not exist; or that in spite of its existence, the Agency's ability to meet its mission would be seriously harmed without the award.

PART 1904—ADMINISTRATIVE MATTERS

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

SOURCE: 50 FR 13203, Apr. 3, 1985, unless otherwise noted.

Subpart 1904.70—Procurement Requests

1904.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with Agency procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

Subpart 1909.4—Debarment, Suspension, and Ineligibility

Sec.
1909.403 Definitions.
1909.404 Consolidated list of debarred, suspended, and ineligible contractors.
1909.406 Debarment, suspension, and ineligibility.
1909.406–3 Procedures.

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

SOURCE: 50 FR 13203, Apr. 3, 1985, unless otherwise noted.

Subpart 1909.4—Debarment, Suspension, and Ineligibility

1909.403 Definitions.

The Agency Procurement Executive, is designated the ''debarring official'' and the ''suspending official'' as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405(a), 9.405–1(b), 9.405–2, 9.406–1(c), and 9.407–1(d).

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure the list is used effectively.

(b) The Agency Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406–3 Procedures.

(a) *Investigation and referral.* Any officer of the Agency who becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Agency Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision-making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Agency Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Agency Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Agency Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the Office of General Counsel and Congressional Liaison, the Bureau of Management, and the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Agency Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarring/suspending official's decision.* The debarring/suspending official's final decision shall be made in

writing in accordance with FAR 9.406–3 and notice of the decision will be given in accordance with FAR 9.406–3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

1910.004–70 Brand name products or equal.
1910.004–71 Limits on the use of brand name or equal purchase descriptions.
1910.004–72 Solicitations, brand name or equal descriptions.
1910.004–73 Offer evaluation and award, brand name or equal descriptions.
1910.004–74 Procedure for negotiated procurements and small purchases.
1910.011 Solicitation provisions and contract clauses.

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

SOURCE: 50 FR 13204, Apr. 3, 1985, unless otherwise noted.

1910.004–70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(a)(2), USIA acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an ''equal'' product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See 1910.004–73.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1910.004–71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision of 1952.210–70 would be impracticable, the requirement to include the entry described in 1910.004–72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practicable.

(c) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved at one level above the contracting officer.

1910.004–72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on:

Manufacturer's Name: _____

Brand: _____

No.: _____

(b) Because bidders frequently overlook the requirements of the clause at 1952.210–70 ''Brand Name or Equal,'' the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision ''Brand Name or Equal'' set forth in 1952.210–70 of the solicitation).

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1910.004–73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

1910.004–74 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed for sealed bid procurements shall be generally applicable to negotiated procurements.

(b) The clause set forth at 1952.210–70 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products meet fully the salient characteristics requirements of the solicitation.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

1910.011 Solicitation provisions and contract clauses.

The Contracting Officer shall include the provision at 1952.210–70, Brand Name or Equal, in solicitations for which brand name or equal purchase is used.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.
1913.505–2 Agency order forms in lieu of Optional and Standard Forms.

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

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505–2 Agency order forms in lieu of Optional and Standard Forms.

(a) Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an equivalent form has been authorized for use by the Agency Procurement Executive (or Designee). Exceptions may be granted, on a case-by-case basis, in order to accommodate computer-generated purchase order forms. Exception approval for over printing (FAR 53.104) is not needed.

(b) USIA Form IA–44 (see 1953.370–44) is authorized for use when obtaining nonpersonal services on an intermittent basis for such services as script writers, translators, narrators, etc.

[50 FR 13205, Apr. 3, 1985]

PART 1915—CONTRACTING BY NEGOTIATION

Subpart 1915.1—General Requirements for Negotiation

Sec.

1915.106 Contract clauses.
1915.106–70 Key personnel and facilities.

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

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1915.1—General Requirements for Negotiation

1915.106 Contract clauses.

1915.106–70 Key personnel and facilities.

Whenever contractor selection has been substantially predicated on the contractor's possession of special capabilities (i.e., personnel and/or facilities) the contracting officer shall include the clause at 1952.215–70 in the awarded contract.

PART 1917—SPECIAL CONTRACTING METHODS

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

SOURCE: 50 FR 13205, Apr. 3, 1985, unless otherwise noted.

Subpart 1917.1—Multiyear Contracting

1917.102 Policy.

When consistent with 22 U.S.C. 1472(b), the Head of the Agency may approve multiyear contracts up to five years.

SUBCHAPTERS D—F [RESERVED]
SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1942—CONTRACT ADMINISTRATION

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

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

Subpart 1942.2—Assignment of Contract Administration

1942.202–70 Authorized Representative of the Contracting Officer (AR/CO).

The Contracting Officer may designate an appropriately qualified Government employee to act as the Authorized Representative of the Contracting Officer (AR/CO). Such designation shall apply to a single contract, must be in writing, and shall define the scope and limitations of the AR/CO's authority. The instrument designating an AR/CO shall not contain authority to sign or agree to any contract or major modification to a contract. Contractual commitments shall be made only by a duly certified contracting officer. The Contracting Officer shall insert the clause at 1952.242–70, Authorized Representative of the Contracting Officer, in solicitations and contracts when an individual is to be selected and designated by the Contracting Officer to perform administration of a given contract(s).

PART 1946—QUALITY ASSURANCE

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

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

Subpart 1946.7—Warranties

1946.704 Authority for use of warranties.

(a) The procurement request initiator is responsible for preparing a written recommendation for those purchases deemed to be appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty provision is to be included.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1952.000 Scope of part.

Subpart 1952.1—Instructions for Using Provisions and Clauses

1952.102–2 Incorporation in full text.
1952.104 Procedures for modifying and completing provisions and clauses.

Subpart 1952.2—Texts of Provisions and Clauses

1952.215–70 Key personnel and facilities.
1952.227–76 Government rights (unlimited).
1952.227–77 Rights in shop drawings.
1952.227–78 Disposition of prints and videotape recordings.

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

SOURCE: 50 FR 13212, Apr. 3, 1985, unless otherwise noted.

1952.000 Scope of part.

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

Subpart 1952.1—Instructions for Using Provisions and Clauses

1952.102–2 Incorporation in full text.

All IAAR provisions and clauses shall be incorporated in solicitations and/or contracts in full text.

1952.104 Procedures for modifying and completing provisions and clauses.

IAAR provisions and clauses shall not be modified (see FAR 1952.101(a) unless authorized by the Director, Office of Contracts, and when so authorized, contracting officers must comply with the procedures in FAR 1952.104.

Subpart 1952.2—Texts of Provisions and Clauses

1952.215–70 Key personnel and facilities.

As prescribed in 1915.106–70 insert the following clause in appropriate contracts:

KEY PERSONNEL AND FACILITIES (FEB 1985)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of clause)

1952.227–76 Government rights (unlimited).

As prescribed in 1927.405(g), insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (FEB 1985)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyrights laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

1952.227–77 Rights in shop drawings.

As prescribed in 1927.405(h), insert the following clause:

RIGHTS IN SHOP DRAWINGS (FEB 1985)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

1952.227–78 Disposition of prints and videotape recordings.

As prescribed in 1927.405(j) insert the following clause in License Agreements:

DISPOSITION OF PRINTS AND VIDEOTAPE RECORDINGS (FEB 1985)

If the Agency elects to discontinue distribution and exhibition hereunder, or upon expiration of the term of this License Agreement, the Agency will destroy all prints and erase all videotape recordings of the Film. A certificate(s) attesting to such destruction and/or erasure will be furnished the Licensor upon its written request.

(End of clause)

PART 1953—FORMS

EDITORIAL NOTE: IAAR forms referenced in this subpart do not appear in the Code of Federal Regulations. The list of forms following 1953.370 is set forth for the convenience of the user. Forms may be obtained by writing: Office of Contracts, United States Information Agency, Washington, DC 20547.

Subpart 1953.3—Illustrations of Forms

Sec.
1953.300 Scope of subpart.
1953.370 USIA forms.
LIST OF IAAR FORMS

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

SOURCE: 50 FR 13224, Apr. 3, 1985, unless otherwise noted.

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of subpart.

This subpart contains illustrations of some forms referenced in this IAAR.

1953.370 USIA forms.

This section contains illustrations of USIA forms references in this IAAR.

LIST OF IAAR FORMS

1953.370–21 USIA Form IA–21, Abstract of Quotations.
1953.370–44 USIA Form IA–44, Requisition-Purchase—Order-Invoice for Professional Services.

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

(Parts 2000 to 2099)

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SUBCHAPTER A—GENERAL

PART 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

Sec.
2001.101 Purpose.
2001.102 Authority.
2001.103 Applicability.
2001.104 Issuance.
2001.104–1 Publication and code arrangement.
2001.104–2 Arrangement of the regulations.
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2001.105 Information collection requirements: OMB approval.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.
2001.303 Public participation.

Subpart 2001.4—Deviations from the FAR and the NRCAR

2001.402 Policy.
2001.403 Individual deviations.
2001.404 Class deviations.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.
2001.601 General.
2001.602–3 Ratification of unauthorized commitments.
2001.603 Selection, appointment, and termination of appointment.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b)).

SOURCE: 57 FR 61157, Dec. 23, 1992, unless otherwise noted.

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and the amendments to it are issued by the Director, Office of Administration, under a delegation from the Executive Director for Operations in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, FAR Subpart 1.3, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from non-appropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104–1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the FEDERAL REGISTER; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104–2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this chapter 20 conform with those used in the FAR as follows:

(1) Where chapter 20 implements the FAR or supplements a parallel part,

subpart, section, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104–1 is shown as 2001.104–1 and the NRC's implementation of FAR 24.1 is shown as 2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals ''70'' or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) *Citation*. The NRCAR will be cited in accordance with FEDERAL REGISTER Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as 2001.104–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as ''48 CFR 2001.104–2(c).'' Any section of the NRCAR may be formally identified by the section number, e.g., ''NRCAR 2001.104–2.'' In the NRCAR, any reference to the FAR will be indicated by ''FAR'' followed by the section number, for example FAR 1–104.

2001.104–3 Copies.

Copies of the NRCAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements contained in this part appear in 2009.570–3(b)(1)&(2), 2009.570–3(c), 2009.570–3(c)(4)(ii), 2009.570–5(b), 2009.570–8, 2014.201–670, 2015.607, 2019.705–4(a), 2027.305–3(a), 2042.803(a)(b), 2052.204–70(b)(j)&(k), 2052.204–71, 2052.204–72, 2052.209–71, 2052.209–72, 2052.209–73(d)(2)&(3)&(f), 2052.210–70(b), 2052.210–71, 2052.212–70, 2052.212–71, 2052.212–72, 2052.213–73, 2052.214–71, 2052.214–72(e), 2052.214–74, 2052.214–75, 2052.215–70, 2052.215–71(f), 2052.215–76, 2052.215–77, 2052.216–74, 2052.235–70, 2052.235–71, and 2052.235–72.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives, or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitting to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request (including the result of that request);

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and Regional Offices. All of the above delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602–3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility,

certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications must be approved by the Competition Advocate except that ratifications of procurement actions valued at $2,500 or less may be approved by the appropriate Regional Administrator or at a level above the appropriate Headquarters Contracting Officer. For any such action approved by the Regional Administrator, all other terms of Subpart 2001.6 are applicable, and a copy of all documentation must be submitted within two working days to the Competition Advocate.

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

(1) The Designating Official, responsible for the office request, shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A statement as to why the contracting office was not used including the name of the employee who made the commitment:

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work to be performed or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A statement of whether the contractor has commenced performance; and

(viii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review and forward the written statement of facts for a determination of approval to the Competition Advocate DCPM, with any comments or information which should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

[57 FR 61157, Dec. 23, 1992; 58 FR 8449, Feb. 12, 1993]

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the ''Certificate of Appointment''; SF 1402.

PART 2002—DEFINITIONS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841, and 41 U.S.C. 418(b).

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or *Head of the Agency* means the NRC Executive Director for Operations, for the purposes specified in this regulation and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Public Law 98–369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Day means calendar day unless otherwise specified. If the last day of the designated period of time is a Saturday, Sunday, or legal holiday under Federal law, the period includes the next business day.

Head of the Contracting Activity (HCA) means the Director, Division of Contracts and Property Management.

Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Director, Office of Administration, has been appointed the NRC Procurement Executive.

[57 FR 61159, Dec. 23, 1992]

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards

Sec.

2003.101 Standards of conduct.
2003.101–3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

AUTHORITY: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242, as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61159, Dec. 23, 1992, unless otherwise noted.

Subpart 2003.1—Safeguards

2003.101 Standards of conduct.

2003.101–3 Agency regulations.

NRC standards of conduct for its employees are published in 10 CFR Part 0. The standards of conduct include requirements for financial disclosure (§ 0.735–28).

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the ''Gratuities'' clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General. A report must include all facts and circumstances related to the case. Refer to 10 CFR 0.735–42, Gifts, Entertainment and Favors, for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2004.4—Safeguarding Classified Information Within Industry

2004.404 Contract clauses.

The security clauses used in NRC contracts are found at 2052.204. They are:

(a) Security, 2052.204–70. This clause will be used in all contracts during the performance of which the contractor may have access to, or contact with classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) Site Access Badge Requirements, 2052.204–71. This clause will be used in all contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

[57 FR 61160, Dec. 23, 1992]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2005—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93–400, 88 Stat. 796, as amended by Pub. L. 96–83, 93 Stat. 648, Pub. L. 98–577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

[57 FR 61160, Dec. 23, 1992]

PART 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.

2009.101 NRC policy.
2009.105 —70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.
2009.404 Consolidated list of parties excluded from Federal procurement or nonprocurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
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2009.406 Debarment.
2009.406–3 Procedures.
2009.407 Suspension.
2009.407–3 Procedures.
2009.470 Appeals.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570–1 Scope of policy.
2009.570–2 Definitions.
2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570–4 Representation.
2009.570–5 Contract clauses.
2009.570–6 Evaluation, findings, and contract award.
2009.570–7 Conflicts identified after award.
2009.570–8 Subcontracts.
2009.570–9 Waiver.
2009.570–10 Remedies.

AUTHORITY: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242; as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61160, Dec. 23, 1992, unless otherwise noted.

Subpart 2009.1—Responsible Prospective Contractors

2009.101 NRC policy.

(a) It is NRC policy that contracts will not normally be placed on a noncompetitive basis with an individual who was employed by the NRC within two years of the date of the request for procurement action. This policy also pertains to any firm in which a former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees and for granting consent of subcontracts. An exception to this policy will be made if it is determined by the agency Procurement Executive to be in the best interest of the Government to do so. This restriction also applies to former NRC employees acting as a principal under a task order type contract or as a principal under a contract awarded non-competitively under the Small Business Administration's 8(a) Program. This policy is also applied when reviewing subcontracts for the purpose of granting consent under NRC prime contracts.

(b) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(c) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraph (a) of this section on a noncompetitive basis may be approved by the Procurement Executive after consulting with the Executive Director for Operations or his designee. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(d) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

2009.105–70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) Section 2052.209–70, Qualifications of Contract Employees.

(b) Section 2052.209–71 , Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in 2009.4:

Debarring official means the Procurement Executive.

Initiating official means the contracting officer, the Head of the Contracting Activity (HCA), the Procurement Executive, or the Inspector General.

Suspending official means the Procurement Executive.

2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c)(1)-(3).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

2009.405–1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405–1.

2009.405–2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

2009.406 Debarment.

2009.406–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) Decision-making process. If, after reviewing the recommendations and

consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) Fact-finding proceedings. For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407–3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with 9.407–3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570–1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570–2 Definitions.

As used in 2009.570:

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in 2009.570–1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or *prospective contractor* means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding the small purchase threshold.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public.

These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

[57 FR 61160, Dec. 23, 1992; 58 FR 8449, Feb. 12, 1993]

2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.*

(1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information, that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement, being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendation to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in 2009.570–5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in

relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request for Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance.* This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless

the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209–73(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example.* AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety an environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance.* An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with 2009.570–9.

(7)(i) *Example.* The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance.* 2052.290–73(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example.* ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of $5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a $100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance.* The Contracting Officer, would allow the contractor to proceed with the solicitation because (A) it is not in the same technical area as the NRC work and (B) the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example.* The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of $100 million. ABC Corp. has responded to an NRC Request for Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is $75K.

(ii) *Guidance.* An NRC contract would not normally be awarded to ABC Corp. since these factors create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations.*

(1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations

which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflict of interest representation provision at 2052.209–72 must be included in solicitations and unsolicited proposals, (including those for task orders and modifications for new work) for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the ''Changes'' clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570–5 Contract clauses.

(a) *General contract clause.* All contracts and small purchases of the types set forth in 2009.570–4(b) must include the clause entitled, ''Contractor Organizational Conflicts of Interest,'' set forth in 2052.209–73.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570–9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570–6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of 2009.570–3, the contracting officer shall make a findings of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of 2009.570–9.

2009.570–7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the government to terminate the contract, as provided in the clauses required by 2009.570–5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570–9, neutralize the effects of the identified conflict.

2009.570–8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representative statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of $10,000 in accordance with 2009.570–4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570–5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570–9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards, with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program.

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

2009.570–10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2010—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
2010.004 Brand name products or equal.
2010.011 Solicitation provisions and contract clauses.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b).

2010.004 Brand name products or equal.

(a) Acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances this type of approach may be used as described below.

(b) Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an ''equal'' product, a reference to that brand name product should be included in the purchase description for later acquisition. If a brand name product is no longer applicable, the reference to that brand name must be deleted from any subsequent purchase description.

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do

so may result in a defective solicitation and the necessity to resolicit the requirement. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. A characteristic (e.g., a specific dimension) of a brand name product may not be specified unless it is essential to the Government's need. The contracting officer shall be able to justify the requirement.

(c) The clause found at 2052.210–70 must be inserted in all solicitations citing a brand name or equal, except when samples are requested.

(d) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In these cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

(e) In small purchases within the open market limitations, brand name policies and procedures are applicable to the extent practicable.

[57 FR 61164, Dec. 23, 1992]

2010.011 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at 2052.210–71, Drawings, Designs, Specifications, and Data, in all contracts in which drawings, designs, specifications, or other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

[57 FR 61164, Dec. 23, 1992]

PART 2012—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2012.104—Contract clauses

2012.104–70 NRC clauses.

(a) The contracting officer shall insert the clause at 2042.212–70, Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at 2052.212–71, Technical Progress Report, in all solicitations and contracts except—

(1) Firm fixed price; or

(2) Indefinite-delivery contracts to be awarded on a time and materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at 2052.212–72, Financial Status Report, in all solicitations and contracts (except Fixed Price) when detailed assessment of costs is warranted and a Contractor Spending Plan is required; use the clause at 2052.212–73 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter these clauses prior to issuance of the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

[57 FR 61165, Dec. 23, 1992, as amended at 58 FR 26253, May 3, 1993]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2013.5—Purchase Orders

2013.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

NRC Form 103, Purchase Order, is prescribed for use by the NRC in lieu of Optional Forms 347 and 348.

[57 FR 61165, Dec. 23, 1992]

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201–670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.
2014.406–3 Other mistakes disclosed before award.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61165, Dec. 23, 1992, unless otherwise noted.

Subpart 2014.2—Solicitation of Bids

2014.201 Preparation of invitation for bids.

2014.201–670 Solicitation provisions.

(a) The contracting officer shall insert the provision at 2052.214–70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit circumstances.

(b) The cognizant contracting officer shall insert in all invitations for bids, except as noted, the provisions at:

(1) Section 2052.214–71, Bidder Qualifications and Past Experiences. (optional, to fit circumstances)

(2) Section 2052.214–72, Bid Evaluation (paragraph f. is optional).

(3) Section 2052.214–73, Timely Receipt of Bids.

(4) Section 2052.214–74, Disposition of Bids.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406–3 Other mistakes disclosed before award.

(a) The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

(b) The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.406–4.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2015.407–70 Solicitation provisions and contract clauses.
2015.413 Disclosure and use of information before award.
2015.413–2 Alternate II.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.
2015.506–1 Receipt and initial review.
2015.506–2 Evaluation.
2015.507 Contracting methods.

Subpart 2015.6—Source Selection

2015.602 Applicability.
2015.604 Responsibilities.
2015.605 Evaluation factors.

2015.607 Disclosure of mistakes before award.
2015.608 Proposal evaluation.
2015.610 Written or oral discussions.
2015.611 Best and final offers.
2015.612 Sources Evaluation Panel structure.
2015.670 Contract provisions.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61166, Dec. 23, 1992, unless otherwise noted.

Subpart 2015.4—Solicitation and Receipt of Proposals and Quotations

2015.407–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in Requests for Proposals (RFPs) the provisions at:

(1) Section 2052.215–70, Key Personnel;

(2) (i) Section 2052.215–71, Project Officer Authority (for solicitations for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost-sharing, labor-hour or time-and-materials, including task order contracts);

(ii) Section 2052.215–72, Project Officer Authority—Alternate 1 (for solicitations for issuance of delivery orders for specific products/services).

(iii) Section 2052.215–73, Project Officer Authority—Alternate 2 with paragraph (b)(1) deleted and the remainder of the clause renumbered (for solicitations for firm fixed price contracts);

(iv) The provision, 2052.215–71, and Alternates 1 and 2 are intended for experienced, trained project officers, and may be altered to delete duties where appropriate.

(3) Section 2052.215–74, Timely Receipt of Proposals;

(4) Section 2052.215–75, Award Notification and Commitment of Public Funds; and

(5) Section 2052.215–76, Disposition of Proposals.

(b) The contracting officer shall insert in all solicitations for negotiated procurements for cost type contracts that do not provide for task orders or delivery orders, the provision at 2052.215–77, Proposal Presentation and Format, except that:

(1) For all solicitations for negotiated task order contracts, paragraphs (e)(4) (xi) and (xii) must be deleted (and the remainder renumbered), and the paragraph found at 2052.215–78—Alternate 1, must be substituted for paragraph (d)(2).

(2) 2052.215–79—Alternate 2. For all negotiated procurements for a fixed-price, labor-hour, or time-and-materials contract, paragraph (d)(2) shall be deleted from the provision 2052.215–77.

These provisions must be tailored to assure that all sections, but in particular paragraph (e), Technical and Management Proposal, reflect a one-to-one relationship to the evaluation criteria.

(c) The contracting officer shall insert the provision at 2052.215–80, Preproposal Conference, in RFPs where there will be a preproposal conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the clauses at 2052.215–81, Travel Reimbursement, and 2052–215–83, Travel Approvals, in RFPs where there will be travel. For contracts where there is no ceiling amount on domestic travel, the provision found at 2052.215–82, Travel Reimbursement—Alternate 1 shall be used with paragraph (a) deleted and the remainder of the clause renumbered.

[58 FR 26253, May 3, 1993]

2015.413 Disclosure and use of information before award.

2015.413–2 Alternate II.

The procedures discussed at FAR 15.413–2 may be used if approved at a level above the contracting officer.

Subpart 2015.5—Unsolicited Proposals

2015.506 Agency procedures.

(a) The Division of Contracts and Property Management, Policy Branch (PB), is the point of contact for the receipt, acknowledgement, and handling of unsolicited proposals.

(b) Unsolicited proposals in original and two copies, and requests for additional information regarding their preparation must be submitted to: Chief, Policy Branch, Division of Contracts and Property Management, Mail Stop P–1118, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

This will ensure that the proposal is logged into the unsolicited proposal tracking system.

2015.506–1 Receipt and initial review.

(a) PB shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) PB shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgement letter will be sent to the proposer by the PB, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.503 and 15.505.

2015.506–2 Evaluation.

Directors of NRC offices shall conduct comprehensive technical evaluations of proposals submitted to them by the PB, in accordance with the criteria discussed in FAR 15.506–2(a).

2015.507 Contracting methods.

If a noncompetitive contract is recommended, the Director of the recommending NRC office shall submit to the Division of Contracts and Property Management a written evaluation, Request for Procurement Action (RFPA) and Justification for Other Than Full and Open Competition in accordance with FAR 15.507(b)(5).

Subpart 2015.6—Source Selection

2015.602 Applicability.

This subpart does not apply to contracts awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.604 Responsibilities.

(a) All persons participating in the evaluation process may not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceeding, and then only to the extent that the information is required in connection with the proceeding. Divulging information during evaluation, selection, and negotiation phases of the acquisition to offerors or to other persons not having a need to know could jeopardize the resultant award and violates the information-disclosure provisions of FAR 3.104, Procurement Integrity. These provisions carry criminal as well as civil and administrative penalties. Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may release source selection information to others during the selection process. The contracting officer (or authorized representative) shall instruct all participants in the evaluations to observe the prohibitions of the Procurement Integrity Act. A procurement official certification must be signed for each agency employee personally and substantially involved in preparing or approving the advance procurement plans, statement of work and participating in the source evaluation process [i.e. serving as a member of the Source Evaluation Panel (SEP)].

(b) All persons participating in the evaluation process shall declare any financial or other relationships which may create conflict of interest problems with their evaluation duties. A form for this purpose must be signed prior to receipt of any proposals or participation in discussion of proposals.

(c) Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may conduct discussions with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

[57 FR 61166, Dec. 23, 1992; 58 FR 8449, Feb. 12, 1993]

2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with 2015.407–70(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors is accomplished by

the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and ''go/no go'' evaluation factors.

[57 FR 61166, Dec. 23, 1992; 58 FR 8450, Feb. 12, 1993]

2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

2015.608 Proposal evaluation.

(a) A Source Evaluation Panel (SEP) shall evaluate technical proposals in accordance with the solicitation technical evaluation criteria. The SEP prepares and signs the Competitive Range Report with the SEP's findings and scoring for each technical proposal together with its analysis of cost and other factors and forwards the report for the review and approval of the Designating Official. The contracting officer uses this technical evaluation and analysis of costs and other factors in determining the competitive range.

(b) The Designating Official (Office Director or designee) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after proposal evaluation: the Competitive Range Report and the Final Evaluation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any deficiencies including ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in understanding the proposals and their strengths and weaknesses based upon the individual efforts of each offeror to ensure that the meaning and emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.

2015.611 Best and final offers.

The SEP evaluates the technical proposal portion of the best and final offers. Technical proposals will be recorded and rescored by the SEP, as appropriate, and a Final Evaluation Report of the SEP's findings and scoring for each technical proposal will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of the technical proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Report and will become part of the official file.

[57 FR 61166, Dec. 23, 1992; 58 FR 8450, Feb. 12, 1993]

2015.612 Source Evaluation Panel structure.

(a) For all proposed contracts with total estimated values in excess of $25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a SEP.

(b)(1) The SEP includes:

(i) At least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted factors; and

(ii) A contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC.

(2) Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the

NRC program office initiating the request or other NRC employees with expertise in areas related to the solicitation Statement of Work. Appointment of a technical member from other than the office initiating the request is encouraged. Employees of other agencies with expertise in a specific area may also serve as SEP technical members not withstanding the fact that they are not employees of the NRC. Evaluators need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases and the solicitation should notify offerors of the NRC's intent to use non-Federal evaluators. The CO will make a determination whether or not a non-federal evaluator will be a voting SEP member. For proposed procurements with a total estimated cost of less than $500,000 over a performance period of three years or less, a single technical member may be appointed to evaluate proposals with the contracting officer's approval. Designation of SEP members is accomplished by memorandum initiated by the director of the program office or the director's designee. This official is referred to as the Designating Official (DO).

(c) The SEP chairperson may obtain the services of advisors (e.g., legal, financial, etc.) to assist the SEP. Advisors who serve on technical evaluation committees are appointed in writing by the DO. Advisors are not SEP members, and therefore do not score proposals. Advisors need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases, and the solicitation should notify offerors of the NRC's intent to use non-Federal advisors.

(d) The contracting officer shall establish the competitive range on all acquisitions. This is accomplished by approval of the SEP's written recommendation transmitted by the DO.

(e) The source selection official is the contracting officer. Selection is made based on review of the SEP's recommendations as endorsed by the DO, together with all supporting data to ensure that award is in accordance with sound procurement principles and directly related to the evaluation criteria as set forth in the solicitation. Any proposed selection not endorsed by the DO will be concurred in by the Head of the Contracting Activity.

2015.670 Contract provisions.

(a) The contracting officer shall include the provision found at 2052.215–84, Contract Award and Evaluation of Proposals, in all solicitations where technical is more important than cost:

(1) The contracting officer shall substitute the paragraph found at 2052.215–85 for paragraph (b) in all solicitations for negotiated competitive procurements where cost is more important than technical merit.

(2) The contracting officer shall substitute the paragraph found at 2052.215–86 for paragraph (b) in all solicitations for negotiated competitive procurements where cost and technical merit are of equal significance.

(b) The contracting officer may make appropriate changes to the provision to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and benchmarking criteria for ADP procurements.

[58 FR 26254, May 3, 1993]

PART 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.
2016.307–70 Contract provisions and clauses.

Subpart 2016.5 Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61168, Dec. 23, 1992, unless otherwise noted.

Subpart 2016.3—Cost Reimbursement Contracts

2016.307–70 Contract provisions and clauses.

(a) The contracting officer shall insert the clause at 2052.216–70, Level of Effort, in solicitation for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost

sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer shall insert the following provisions and clauses in all cost reimbursement contracts:

(1) Section 2052.216–71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216–72, Indirect Cost Rates—Alternate 1 (where predetermined rates apply).

(3) Section 2052.216–73, Indirect Cost Rates—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts

2016.506–70 Contract provisions and clauses.

The contracting officer shall insert the following provisions in all solicitations and contracts that contain task order procedures:

(a) Section 2052.216–74, Task Order Procedures;

(b) Section 2052.216–75, Accelerated Task order Procedures.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2017—SPECIAL CONTRACTING METHODS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2017.2—Options

2017.204 Contracts

(a) The contracting officer may approve extensions to five year contracts for up to a total of an additional six months, for the purpose of completing the competitive process for a follow on contract, provided that the competitive requirement was received in DCPM not less than six months before the end of the fifth year.

(b) The Head of the Contracting Activity may approve extensions for up to a total of five years.

[57 FR 61168, Dec. 23, 1992, as amended at 58 FR 47221, Sept. 8, 1993]

PART 2019—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2019.7—Subcontracting with small business and small disadvantaged business concerns

Sec.

2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61168, Dec. 23, 1992, unless otherwise noted.

Subpart 2019.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

2019–705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

(a) During the source selection process, subcontracting plans may be requested from all concerns required to submit them and determined to be in the competitive range, for negotiation with the apparent successful offeror.

(b) The contracting officer may accept the terms of an overall or ''master'' company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, if:

(1) The master plan contains all of the elements required by FAR 19.704;

(2) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory threshold;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(4) The contracting officer has copies of the entire plan.

PART 2020—LABOR SURPLUS AREA CONCERNS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2020.1—General

2020.102 General Policy.

Acquisitions that are in excess of $25,000 must be reviewed for potential labor surplus area set-aside consideration in accordance with FAR 20.104 using publications and other information identifying labor surplus areas obtained from: U.S. Department of Labor,

Employment and Training Administration, U.S. Employment Service, Office of Labor Market Information, 200 Constitution Ave., NW., room N4456, Washington, DC 20510, Telephone Number: (202) 535–0157.

[57 FR 61168, Dec. 23, 1992]

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1 Basic Labor Policies

Sec.
2022.101–1 General.
2022.103–4 Approvals.

Subpart 2022.9 Nondiscrimination Because of Age

2022.901–70 Contract provisions.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 4186(b).

SOURCE: 57 FR 61168, Dec. 23, 1992, unless otherwise noted.

Subpart 2022.1 Basic Labor Policies

2022.101–1 General.

The Head of Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance.

2022.103–4 Approvals.

The agency approving official for contractor overtime shall be the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

The contracting officer shall insert the provision found at 2052.222–70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61169, Dec. 23, 1992, unless otherwise noted.

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR part 9, subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR part 9, Subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

PART 2025—FOREIGN ACQUISITION

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2025.1—Buy American Act—Supplies

2025.102 Policy.

Contracting officers may make the determination required by FAR 25.102(a)(4), provided the determination is factually supported in writing. For contracts exceeding $1 million, the Head of the Contracting Activity shall approve the determination.

[57 FR 61169, Dec. 23, 1992]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contracts

Sec.
2027.305 Administration of patent rights clauses.
2027.305–3 Follow-up by Government.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61169, Dec. 23, 1992, unless otherwise noted.

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305 Administration of patent rights clauses.

The contracting officer shall ensure that each contractor report is in writing on whether any patent rights are being claimed, before final payment and closeout of the contract.

2027.305–3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(b) The contracting officer may waive any of the requirements paragraphs (a)(1)–(4) of this section, after documenting the file to indicate the—

(1) Impracticality of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(c) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patient, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

PART 2030—COST ACCOUNTING STANDARDS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2030.2—CAS Program Requirements

2030.201–5 Waiver.

Requests to waive Cost Accounting Standards (CAS) requirements must be submitted to the Chairman, CAS Board, by the Procurement Executive. The requests for waivers must be forwarded through the Head of the Contracting Activity with supporting documentation and rationale.

[58 FR 26254, May 3, 1993]

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2031.1—Applicability

2031.109–70 Contract clauses.

The contracting officer shall insert the clause at 2052.231–70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

[57 FR 61169, Dec. 23, 1992]

PART 2032—CONTRACT FINANCING

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2032.4—Advance Payments

2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements except for subscriptions to publications, the approving official shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

[57 FR 61169, Dec. 23, 1992]

PART 2033—PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1—Protests

Sec.

2033.103 Protests to the agency.
2033.203 Applicability.
2033.211 Contracting officer's decision.
2033.214 Contract clause.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61169, Dec. 23, 1992, unless otherwise noted.

Subpart 2033.1—Protests

2033.103 Protests to the agency.

The agency may not process, or shall cease processing, agency level protests that are protested outside the agency unless and until such time that a proper determination is made authorizing the agency to proceed under the applicable protest procedures.

2033.203 Applicability.

Pursuant to an interagency agreement between the NRC and the Department of Energy Board of Contract Appeals (EBCA), the EBCA will hear appeals from final decisions of NRC contracting officers issued pursuant to the Contract Disputes Act. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(iv) to identify the Energy Board of Contract Appeals and include its address: Webb Building, room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203, when preparing a written decision.

2033.214 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I where continued performance is vital to National Security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impractical.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61170, Dec. 23, 1992, unless otherwise noted.

2035.70 Contract clauses.

(a) The contracting officer shall insert the following clauses in all RFPs for Research and Development or in Requests for Proposals (RFPs) for other technical services as appropriate:

(b) Section 2052.235–70, Publication of Research Results, except that in the case of universities, the contracting officer shall substitute the paragraph found at 2052.235–71 for paragraph c.

(c) Section 2052.235–72 Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) Criteria for selecting contractors will include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

PART 2039—ACQUISITION OF INFORMATION RESOURCES

Sec.
2039.001 Policy.
2039.002 Delegations of procurement authority.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61170, Dec. 23, 1992, unless otherwise noted.

2039.001 Policy.

In accordance with the Federal Information Resources Management Regulation (41 CFR Ch. 201), and appropriate NRC Management Directives, the Office of Information Resources Management will be responsible for development and/or approval of requirements analysis including information needs, justification for specific make and model, analysis of alternatives, and Delegations of Procurement Authority for information resources management procurements in excess of $25,000 (automated data processing, telecommunications, and records), when required. These documents must be submitted to the Division of Contracts and Property Management with the Request for Procurement Action (RFPA) for which these documents are required.

2039.002 Delegations of procurement authority.

The NRC official authorized to sign Agency Procurement Requests and Agency Telecommunications Requests for Delegations of Procurement Authority is the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support or designee.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 418(b).

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR subpart 33.2; and provide a copy of the final decision of the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) against amounts billed the government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the government (in situations where there are insufficient payments owed by the government to effect recovery from the contract).

[57 FR 61170, Dec. 23, 1992]

PART 2045—GOVERNMENT PROPERTY

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing government property (in general).

(a) Unless otherwise provided for in FAR 45.302–1(d), applicable to Government facilities with a unit cost of less than $10,000, a contractor may be provided Government property or allowed to purchase the property at Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

(b) If the program office is aware before the submission of the RFPA that it will be necessary to provide prospective contractors with Government property, a written justification must accompany the RFPA to the Division of Contracts and Property Management.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.
2052.200 Authority.
2052.204–70 Security.
2052.204–71 Site access badge requirements.
2052.209–70 Qualifications of contract employees.
2052.209–71 Current/former agency employee involvement.
2052.209–72 Contractor organizational conflicts of interest (representation).
2052.209–73 Contractor organizational conflicts of interest.
2052.210–70 Brand name products or equal.
2052.210–71 Drawings, designs, specifications, and other data.
2052.212–70 Preparation of technical reports.
2052.212–71 Technical progress report.
2052.212–72 Financial status report.
2052.212–73 Financial status report—Alternate 1.
2052.214–70 Prebid conference.
2052.214–71 Bidder qualifications and past experiences.
2052.214–72 Bid evaluation.
2052.214–73 Timely receipt of bids.
2052.214–74 Disposition of bids.
2052.215–70 Key personnel.
2052.215–71 Project officer authority.
2052.215–72 Project officer authority—Alternate 1.
2052.215–73 Project officer authority—Alternate 2.
2052.215–74 Timely receipt of proposals.
2052.215–75 Award notification and commitment of public funds.
2052.215–76 Disposition of proposals.
2052.215–77 Proposal presentation and format.
2052.215–78 Proposal presentation and format—Alternate 1 (language for negotiated task order contracts).
2052.215–79 Proposal presentation and format—Alternate 2 (language for negotiated fixed prices, labor hour, or time and materials contracts).
2052.215–80 Preproposal conference.
2052.215–81 Travel reimbursement.
2052.215–82 Travel reimbursement—Alternate 1.
2052.215–83 Travel approvals.
2052.215–84 Contract award and evaluation of proposals technical merit more important than cost.
2052.215–85 Contract award and evaluation of proposals—cost most important than technical merit.
2052.215–86 Contract award and evaluation of proposals—cost and technical merit of equal value.
2052.216–70 Level of effort.
2052.216–71 Indirect cost rates.
2052.216–72 Indirect cost rates—Alternate 1.
2052.216–73 Indirect cost rates—Alternate 2.
2052.216–74 Task order procedures.
2052.216–75 Accelerated task order procedures.
2052.222–70 Nondiscrimination because of age.
2052.231–70 Precontract costs.
2052.235–70 Publication of research results.
2052.235–71 Publication of research results—universities.
2052.235–72 Safety, health, and fire protection.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

SOURCE: 57 FR 61171, Dec. 23, 1992, unless otherwise noted.

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204–70 Security.

As prescribed at 2004.404(a), insert the following clause in applicable solicitations and contracts:

SECURITY

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Section J for List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly

provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and the retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93–579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Security and the Contracting Officer. These changes will be under the authority of the changes clause.

(e) Definition of National Security Information. The term National Security Information, as used in this clause, means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term Restricted Data, as used in this clause, means all data concerning:

(1) design, manufacture, or utilization of atomic weapons;

(2) the production of special nuclear material; or

(3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under section 142–d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data, relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment must provide that the subcontractor or supplier assign classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of Clause)

[57 FR 61171, Dec. 23, 1992, as amended at 58 FR 47221, Sept. 8, 1993]

2052.204–71 Site access badge requirements.

As prescribed at 2004.404(b), insert the following clause in applicable solicitations and contracts:

SITE ACCESS BADGE REQUIREMENT

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of Clause)

2052.209–70 Qualifications of contract employees.

As prescribed at 2009.105–70, insert the following provision in applicable solicitations:

QUALIFICATIONS OF CONTRACT EMPLOYEES

The offeror hereby certifies by submission of this offer that all representations made regarding its employees, proposed subcontractor personnel, and consultants are accurate.

(End of Provision)

2052.209–71 Current/former agency employee involvement.

As prescribed at 2009.105–70, insert the following provision in applicable solicitations:

CURRENT/FORMER AGENCY EMPLOYEE INVOLVEMENT

(a) The following representation is required by the NRC Acquisition Regulation 2009.105–70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts, and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of noncompetitive proposals and task orders.

(b) The offeror hereby certifies that there ( ) are ( ) are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

2052.209–72 Contractor organizational conflicts of interest (representation).

As prescribed at 2009.570–4(b) and 2009.570–8, insert the following provision in applicable solicitations:

CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570–3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 48 CFR 2009.570–3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts,

(2) Disqualify the offeror, or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009–570–9.

(b) The refusal to provide the representation required by 48 CFR 2009.570–4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570–3(b), must result in disqualification of the offeror for award.

(End of Provision)

2052.209–73 Contractor organizational conflicts of interest.

As prescribed at 2009.570–5(a) and 2009–570–8, insert the following clause in all applicable solicitations and contracts:

CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor:

(1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract; and

(2) Does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor, as defined in 48 CFR 2009.570–2 in the activities covered by this clause.

(c) Work for others.

(1) Notwithstanding any other provision of this contract, during the term of this contract the contractor agrees to forgo entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate), except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other

regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

(e) Access to and use of information.

(1) If in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public; or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. section 552a (1988)), or the Freedom of Information Act (5 U.S.C. section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) Subject to patent and security provisions of this contract, the contractor shall have the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 2009.570–2, the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms *contract, contractor,* and *contracting officer,* must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing to the contracting officer in accordance with the procedures outlined in 48 CFR 2009.570–9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited), which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

2052.210–70 Brand name products or equal.

As prescribed at 2010.004, insert the following clause in applicable solicitations and contracts:

BRAND NAME PRODUCTS OR EQUAL

Offers (proposers) offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to quality of the product(s) offered.

2052.210–71 Drawings, designs, specifications, and other data.

As prescribed at 2010.011, the following clause shall be submitted in applicable solicitations and contracts:

DRAWINGS, DESIGNS, SPECIFICATIONS, AND OTHER DATA

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations,

other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.212–70 Preparation of technical reports.

As prescribed at 2012.104–70(a), insert the clause in applicable solicitations and contracts:

PREPARATION OF TECHNICAL REPORTS

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, ''Unclassified Contractor and Grantee Publications in the NUREG Series.'' Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See Section J for List of Attachments).

(End of Clause)

2052.212–71 Technical progress report.

As prescribed at 2012.104–70(b), insert the following clause in applicable solicitations and contracts:

TECHNICAL PROGRESS REPORT

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact.

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of clause)

2052.212–72 Financial status report.

As prescribed at 2012.104–70(c), insert the following clause in applicable solicitations and contracts.

FINANCIAL STATUS REPORT

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Job Code, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total estimated contract amount.

(2) Total funds obligated to date.

(3) Total costs incurred this reporting period.

(4) Total costs incurred to date.

(5) Provide a detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(6) Balance of obligations remaining.

(7) Balance of funds required to complete contract/task order.

(8) Contractor Spending Plan (CSP) status:

(i) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(ii) Indicate if there has been a significant change in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient

in lieu of submitting a detailed response to item 8.

(9) A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(b) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of Clause)

[57 FR 61171, Dec. 23, 1992, as amended at 58 FR 26254, May 3, 1993]

2052.212–73 Financial status report—Alternate 1.

Financial Status Report—Alternate 1

As prescribed in §2012.104–70(c), insert the following provision in applicable solicitations:

The Contractor shall provide a monthly Financial Status Report to the Project Officer and the Contracting Officer. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

(1) Total Estimated Contract Amount.

(2) Total Funds Obligated to Date.

(3) Total Costs Incurred This Reporting Period.

(4) Total Costs Incurred to Date.

(5) Balance of Obligations Remaining.

(6) Balance of Funds Required To Complete Contract.

(b) Detail of all direct and indirect costs incurred during the reporting period for each task.

[End of Clause]

2052.214–70 Prebid conference.

As prescribed at 2014.201–670(a), insert the following provision in applicable solicitations:

PREBID CONFERENCE

(a) A prebid conference is scheduled for:

Date: * * *

Location: * * *

Time: * * *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Attn: * * *, Mail Stop * * *, Washington, DC 20555.

(d) The envelope must be marked ''Solicitation No. * /Prebid Conference.''

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

2052.214–71 Bidder qualifications and past experiences.

As prescribed in 2014.201–670(b), insert the following provision in applicable solicitations:

BIDDER QUALIFICATIONS AND PAST EXPERIENCES

(a) The bidder shall list * previous/current contracts for the same or similar products/services. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts for same or similar products/services or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(1) Contract No.: _____

Name and address of Government agency or commercial entity:

_____

_____

_____

Point of Contact and Telephone Number:

_____

_____

(2) Contract No.: _____
Name and address of Government agency or commercial entity:

_____

_____

_____

Point of Contact and Telephone Number:

_____

_____

(3) Contract No.: _____
Name and address of Government agency or commercial entity:

_____

_____

_____

Bid evaluation.

_____

_____

(b) The bidder shall also provide the name, title and full telephone number for its technical representative and contracts/business representative:

(1) Technical Representative

Name _____
Title _____
Telephone No. ( ) _____

(2) Contracts/Business

Representative Name _____
Title _____
Telephone No. ( ) _____
*To be incorporated into the solicitation

(End of Provision)

2052.214–72 Bid evaluation.

As prescribed at 2014.201–670(b), insert the following provision in applicable solicitations:

BID EVALUATION

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid, constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's ''Total Bid Amount.''

(b) Bidders shall insert a definite price or indicate ''no charge'' in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within * hours after receiving the request:

(1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,

(2) Samples of work, and

(3) Names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an ''all or none'' basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of Provision)

2052.214–73 Timely receipt of bids.

As prescribed at 2014.670(b), insert the following provision in applicable solicitations:

TIMELY RECEIPT OF BIDS

Because the NRC is a secure facility with perimeter access control, bidders shall allow additional time for hand delivery (including express mail and delivery services) of bids to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

2052.214–74 Disposition of bids.

As prescribed at 2014.670(b), insert the following provision in applicable solicitations:

DISPOSITION OF BIDS

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215–70 Key personnel.

As prescribed at 2015.407–70(a), insert the following clause in applicable solicitations and contracts:

KEY PERSONNEL

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

* * *

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer or his/her authorized representative shall evaluate the request and promptly notify the contractor of his or her approval or disapproval in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

(End of Clause)

*To be incorporated into any resultant contract

2052.215–71 Project officer authority.

As prescribed in 2015.70(a)(2)(i), insert the following clause in applicable solicitations and contracts:

PROJECT OFFICER AUTHORITY

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: * * *

Address: * * *

Telephone Number: * * *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term *technical direction* is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the ''Changes'' clause of this contract.

(3) In any way cause an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the ''Changes'' clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect thereto is subject to 52.233–1—Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of the section, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215–72 Project officer authority—Alternate 1.

As prescribed at 2015.407–70(2)(ii), insert the following clause in applicable solicitations and contracts:

PROJECT OFFICER AUTHORITY—ALTERNATE 1

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer for this contract is:

Name: * * *

Address: * * *

Telephone Number: * * *

(b) The project officer shall:

(1) Place delivery orders for items required under this contract.

(2) Monitor contractor performance and recommend to the contracting officer changes in requirements.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract

(End of Clause)

2052.215–73 Project officer authority—Alternate 2.

As prescribed at 2015.407–70(a) for solicitations for fixed price contracts, the clause at 2052.215–72—Alternate 1 must be used with paragraph (b)(1) deleted and the remainder of the clause renumbered.

[58 FR 26254, May 3, 1993]

2052.215–74 Timely receipt of proposals.

As prescribed in 2015.407–70(a), insert the following provision in applicable solicitations:

TIMELY RECEIPT OF PROPOSALS

Because NRC is a secure facility with perimeter access control, offerors shall allow additional time for hand delivery (including express mail and delivery services) of proposals to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–75 Award notification and commitment of public funds.

As prescribed at 2015.407–70(a), insert the following clause in applicable solicitations and contracts:

AWARD NOTIFICATION AND COMMITMENT OF PUBLIC FUNDS

(a) All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection for unrestricted awards may not be made until a contract has been awarded. Pursuant to requirements of FAR 15.1001(b)(2), preliminary notification will be provided before the award for small business set-aside procurements on negotiated procurements.

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

(1) Encouraging a potential contractor to incur costs prior to receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–76 Disposition of proposals.

As prescribed in 2015.407–70(a)(5), insert the following provision in applicable solicitations:

DISPOSITION OF PROPOSALS

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–77 Proposal presentation and format.

As prescribed at 2015.407–70(b), insert the following provision in applicable solicitations:

PROPOSAL PRESENTATION AND FORMAT

(a) Proposals must be typed, printed, or reproduced on letter-size paper and each copy must be legible.

(b) Proposals in response to this Request for Proposal must be submitted in the following three (3) separate and distinct parts:

(1) Two (2) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.

(2) One (1) original and * copies of the ''Cost Proposal.''

(3) One (1) original and * copies of the ''Technical and Management Proposal.''

(c) Correctness of the proposal. *Caution*—offerors are hereby notified that all information provided in its proposals, including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(d) Cost proposal.

(1) The offeror shall use Standard Form 1411, Contract Pricing Proposal Cover Sheet, in submitting the Cost Proposal. A copy of the form and instructions are attached to this solicitation. The information must include pertinent details sufficient to show the elements of cost upon which the total cost is predicted. The Cost Proposal must be submitted separately from the Technical and Management Proposal.

(2) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(3) For any subcontract discussed under the Technical and Management Proposal, provide supporting documentation on the selection process, i.e. competitive vs. noncompetitive, and the cost evaluation.

(e) Technical and management proposal.

(1) The Technical and Management Proposal may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc.,

must be included in the Technical and Management Proposal so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit with the Technical and Management Proposal full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(4) The Technical and Management Proposal must be tailored to assure that all sections reflect a one-to-one relationship to the evaluation criteria. The following are examples of the type of information that should be included in a technical and management proposal.

(i) Discussion of the statement of work to substantiate the offeror's understanding of the requirement.

(ii) Discussion of the proposed method of approach to meet the contract objectives.

(iii) Discussion of potential problem areas and the approach to be taken to resolve these areas.

(iv) Statements of any interpretations, requirements, or assumptions made by the offeror.

(v) Discussion of support personnel and facilities available to assist the professional personnel.

(iv) Identify ''Key Personnel,'' and for the person(s) so identified, specify the percentage of time that will be committed to other projects over the course of the proposed contract period of performance.

(vii) Resumes for all professional personnel, including subcontractors and consultants, to be utilized in the performance of any resulting contract. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(viii) Description of the source of personnel required for performance of each task, including those not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be employed at time of contract award.

(ix) If the offeror plans to obtain consultant services, explain the need for the services. List the proposed consultants by name, describe the work they will perform under this contract, and include related past experience. Individuals who are employees of the contractor or of the U.S. Government are prohibited from being paid as a consultant under this contract.

(x) If the offeror plans to subcontract any of the work to be performed, list proposed subcontractors, if known, by name. Provide a detailed description of the work to be performed by the subcontractor, and supporting documentation of technical evaluation leading to the selection.

(xi) Provide a detailed schedule for work to be performed and identification of significant milestones and completion dates for each subpart or task.

(xii) Project scheduling and contingency planning demonstrating a logical progression and integration of the tasks to ensure completion within the performance period and without program slippage.

(xiii) Describe of the management organizational structure delineating areas of responsibility and authority under the proposed effort. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.

(xiv) Procedures to periodically review in-house organizational functions, program reviews and controls, subsequent coordination with the NRC.

(xv) Management controls expected to be utilized to preclude a contract cost growth.

(xvi) The offeror shall list of any commitments with other organizations, Government and/or commercial, for the same or similar effort.

(xvii) List of* previous contracts for the same or similar services, with the name, title, and full telephone number of a contact for each.

(xviii) List of the name, title, and full telephone number for the proposer's technical representative and contracts/business representative.

(xix) _____ _____ _____ _____ _____

* To be incorporated into the solicitation

(End of Provision)

[57 FR 61171, Dec. 23, 1992. Redesignated and amended at 58 FR 26254, May 3, 1993]

2052.215–78 Proposal presentation and format—Alternate 1 (language for negotiated task order contracts).

As prescribed at 2015.407–70(b)(1), paragraphs e(4)(xi) and 2(xii) must be deleted (and the remainder renumbered) and the following paragraph must be substituted for (d)(2) in provision 2052.215–77.

(d) Cost proposal.

(2) The offeror shall provide a cost proposal based on the estimated level of effort. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

(End of Provision)

[58 FR 26254, May 3, 1993]

2052.215–79 Proposal presentation and format—Alternate 2 (language for negotiated fixed prices, labor hour, or time and materials contracts).

As prescribed at 2015.407–70(b)(2), paragraph (d)(2) shall be deleted from the provision 2052.215–76.

(End of Provision)

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–80 Preproposal conference.

As prescribed at 2015.407–70(c), insert the following provision in applicable solicitations:

(a) A preproposal conference is scheduled for:
Date: *
Location: *
Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential proposer is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, ATTN: *, Mail Stop *, Washington, DC 20555.

(d) The envelope must be marked ''Solicitation No. */Preproposal Conference.''

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

(End of Provision)

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–81 Travel reimbursement.

As prescribed at 2015.407–70(d), insert the clauses or alternate in applicable solicitations and contracts:

TRAVEL REIMBURSEMENT

(a) Total expenditure for domestic travel may not exceed *_____ without the prior approval of the contracting officer.

(b) The contractor is encouraged to use Government contract airlines, AMTRAK rail services, and discount hotel/motel properties in order to reduce the cost of travel under this contract. The contracting officer shall, upon request, provide each traveler with a letter of identification which is required in order to participate in this program. The Federal Travel Directory (FTD) identifies carriers, contract fares, schedules, payment conditions, and hotel/motel properties which offer their services and rates to Government contractor personnel traveling on official business under this contract. The FTD, which is issued monthly, may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

(c) The contractor will be reimbursed for reasonable travel costs incurred directly and specifically in the performance of this contract. The cost limitations for travel costs are determined in accordance with the specific travel regulations cited in FAR 31.205–46, as are in effect on the date of the trip. Travel costs for research and related activities performed at State and nonprofit institutions, in accordance with section 12 of Public Law 100–679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

(d) When the Government changes the Federal Travel Regulations, or other applicable regulations, it is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract if the contractor will be unable to make all of the approved trips

and remain within the cost and fee limitations of this contract due to the changes.

*To be incorporated into any resultant contract.

(End of Clause)

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–82 Travel reimbursement—Alternate 1.

2052.215–83 Travel approvals.

As prescribed in 2015.407–70(d), insert the following clause in applicable solicitations and contracts:

TRAVEL APPROVALS

(a) All domestic travel requires the prior approval of the project officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445 and must be in compliance with FAR 52.247–63, Preference for U.S. Flag Air Carriers. Foreign travel approval must be communicated in writing through the contracting officer.

End of Clause)

As prescribed at 2015.407–70(d) for contracts where there is no ceiling amount on domestic travel, delete paragraph (a) of 2052.215–81 and renumber the remainder of the clause.

(End of Provision)

[58 FR 26254, May 3, 1993]

2052.215.84 Contract award and evaluation of proposals technical merit more important than cost.

As prescribed in 2015.670(a), insert the following provision in applicable solicitations:

CONTRACT AWARD AND EVALUATION OF PROPOSALS

(a) By use of numerical and narrative scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance. Award is made to the offeror:

(1) Whose proposal is technically acceptable;

(2) Whose technical/cost relationship is most advantageous to the Government; and

(3) Who is considered to be responsbile within the meaning of Federal Acquisition Regulation Part 9.1.

(b) Although cost is a factor in the evaluation of proposals, technical merit in the evaluation criteria set forth below is a more significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

(c) The Government may:

(1) Reject any or all offers if the action is in the public interest;

(2) Accept other than the lowest offer; and

(3) Waive informalities and minor irregularities in offers received.

(d) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoints.

(e) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

(f) In making the above determination, an analysis is performed by the Government that takes into consideration the results of the technical evaluation and cost analysis.

*To be incorporated into the solicitation.

(End of Provision)

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–85 Contract award and evaluation of propsoals—cost more important than technical merit.

As prescribed in 2015.670(a), substitute the following paragraph for paragraph (b) in the clause at 2052.215.82:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, cost is more a significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.215–86 Contract award and evaluation of proposals—cost and technical merit of equal value.

As prescribed at 2015.670a(2), substitute the following paragraph for paragraph (b) in the clause at 2052.215.82:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance.

To be selected for an award, the proposed cost must be realistic and reasonable.

[57 FR 61171, Dec. 23, 1992. Redesignated at 58 FR 26254, May 3, 1993]

2052.216–70 Level of effort.

As prescribed at 2016.307–70(a), insert the following provision in applicable solicitations:

LEVEL OF EFFORT

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

*To be incorporated into any resultant contract.

(End of Provision)

2052.216–71 Indirect cost rates.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

INDIRECT COST RATES

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

*

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232–20, Limitation of Cost, or FAR 52.232–22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract.

(End of Clause)

2052.216–72 Indirect cost rates—Alternate 1.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

INDIRECT COST RATES—ALTERNATE 1

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates:

*To be incorporated into any resultant contract.

(End of Clause)

2052.216–73 Indirect cost rates—Alternate 2.

As prescribed at 2016.307–70(b), insert the following clause in applicable solicitations and contracts:

INDIRECT COST RATES—ALTERNATE 1

(a) For this contract, the amount reimbursable for indirect costs is as follows:

*

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates, the rates established by the cognizant audits must apply. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.

(End of Clause)

2052.216–74 Task order procedures.

As prescribed at 2016.506–70(a), insert the following clause in applicable solicitations and contracts:

TASK ORDER PROCEDURES

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORP) which includes the following, as appropriate:

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task order proposal. By the date specified in the TORP, the contractor shall deliver to the contacting officer a written proposal that provides the following technical and cost information, as appropriate:

(1) Technical proposal content;

(i) A discussion of the scope of work requirements to substantiate the contractor's understanding of the requirements of the task order and the contractor's proposed method of approach to meet the objective of the order.

(ii) Resumes for professional personnel proposed to be utilized in the performance of any resulting task order. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(iii) Identification of administrative support personnel and/or facilities that are needed to assist the professional personnel in completing work on the task order.

(iv) Identification of ''Key Personnel'' and the number of staff hours that will be committed to completion of work on the task order.

(2) Cost proposal. The contractor's cost proposal for each task order must be prepared using Standard Form 1411, Contract Pricing Proposal cover sheet. A copy of the form and instructions are attached to this contract. Each task order cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(c) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;

(5) Applicable special provisions; and

(6) Total task order amount including any fixed fee.

(End of Clause)

[57 FR 61171, Dec. 23, 1992; 58 FR 8450, Feb. 12, 1993]

2052.216–75 Accelerated task order procedures.

As prescribed at 2016.506–70, insert the following clause in applicable solicitations and contracts:

ACCELERATED TASK ORDER PROCEDURES

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233–1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of Clause)

2052.222–70 Nondiscrimination because of age.

As prescribed at 2022.901–70, insert the following clause in applicable solicitations and contracts:

NONDISCRIMINATION BECAUSE OF AGE

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirements; and

(b) That contractors and subcontractors, or person acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.231–70 Precontract costs.

As prescribed in §2031.109–70, insert the following clause in applicable solicitations and contracts:

PRECONTRACT COSTS

Allowable costs under this contract must include such costs, incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract

(End of Clause)

[57 FR 61171, Dec. 23, 1992; 58 FR 8450, Feb. 12, 1993]

2052.235–70 Publication of research results.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

PUBLICATION OF RESEARCH RESULTS

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Handbook 3.8 (formerly MC 3202) and NRC Manual Chapter 3206 regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) Prior to any such publication, the contractor shall submit the proposed publication to the NRC Contracting Officer and Project Officer for review and approval.

(End of Clause)

2052.235–71 Publication of research results—universities

As prescribed at §2035–70 substitute the following paragraph (c) for paragraph (c) in 2052.235–70.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is:

(1) subject to Commission approval:

(2) has not been ruled upon, or

(3) disapproved by the Commission, the

NRC reserves the right to disapprove or delay the publication. ''Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

2052.235–72 Safety, Health, and Fire Protection.

As prescribed in 2035.70, insert the following clause in applicable solicitations and contracts:

SAFETY, HEALTH, AND FIRE PROTECTION

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting office may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of Clause)

CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

(Parts 2100 to 2199)

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SUBCHAPTER A—GENERAL

PART 2101—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2101.1—Purpose, Authority, Issuance

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2101.102 Authority.
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2101.104–1 Publication and code arrangement.
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2101.301 Policy.
2101.370 Effective date of LIFAR amendments.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40372, July 28, 1993, unless otherwise noted.

Subpart 2101.1—Purpose, Authority, Issuance

2101.101 Purpose.

(a) This subpart establishes Chapter 21, Office of Personnel Management Federal Employees' Group Life Insurance Federal Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations. The short title of this regulation shall be LIFAR.

(b) The purpose of the LIFAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering a contract, or contracts, for life insurance under the Federal Employees' Group Life Insurance (FEGLI) Program.

2101.102 Authority.

(a) The LIFAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. Chapter 87 and other applicable laws and regulations.

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR Parts 870 through 874, which provide the substantive policy guidance for administration of the FEGLI program under 5 U.S.C. chapter 87. The following is the order of precedence in interpreting a contract provision under the FEGLI Program:

(1) 5 U.S.C. chapter 87.
(2) 5 CFR parts 870 through 874.
(3) 48 CFR chapters 1 and 21.
(4) The FEGLI Program contract.

2101.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEGLI Program pursuant to 5 U.S.C. chapter 87. The LIFAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEGLI Program.

2101.104 Issuance.

2101.104–1 Publication and code arrangement.

(a) The LIFAR and its subsequent changes are published in:

(1) Daily issues of the FEDERAL REGISTER; and

(2) The Code of Federal Regulations, in cumulative form.

(b) The LIFAR is issued as chapter 21 of title 48 of the Code of Federal Regulations.

2101.104–2 Arrangement of regulations.

(a) *General.* The LIFAR conforms with the arrangement and numbering system prescribed by FAR 1.104 and 1.303. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding LIFAR part, subpart, etc. The LIFAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;

(2) LIFAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of Chapter 21 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 21 may be identified as

''LIFAR'' followed by the section number.

Subpart 2101.3—Agency Acquisition Regulations

2101.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEGLI Program shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with certain unique aspects of life insurance, or necessary to satisfy specific needs of the Office of Personnel Management, to the extent not otherwise regulated in the FAR, shall be implemented as amendments to the LIFAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides which are necessary to clarify or implement the LIFAR within OPM may be issued by agency officials designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

2101.370 Effective date of LIFAR amendments.

(a) Except as provided in paragraphs (b) and (c) of this section, an amendment to the LIFAR is effective when promulgated or as provided in the amendment.

(b) Except as provided in paragraphs (c) and (d) of this section, if the LIFAR is amended in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will be made effective the October 1 subsequent to the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(c) Except as provided for in paragraph (d) of this section, if the LIFAR is amended between July 31 and October 1 in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will not be effective until the October 1 in the year following the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(d) Paragraphs (b) and (c) of this section are not applicable to amendments that are necessary to implement new or existing legislation.

PART 2102—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2102.1—Definitions

2102.101 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

Contract means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. chapter 87.

Contractor means an insurance company contracted to provide the benefits specified by 5 U.S.C. chapter 87.

Director means the Director of the Office of Personnel Management.

Employees' Life Insurance Fund means the trust fund established under 5 U.S.C. 8714.

FEGLI Program means the Federal Employees' Group Life Insurance Program.

Fixed price with limited cost redetermination plus fixed fee contract means a contract which provides for:

(1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and

(2) A profit or fee that is fixed at the beginning of the contract term. The

amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

Insurance company, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

OPM means the Office of Personnel Management.

Reinsurer means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the contractor.

Subcontract means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term ''subcontract'' does not include a contract with a reinsurer under the FEGLI Program.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor under the FEGLI Program contract. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term ''subcontractor'' does not include reinsurers under the FEGLI Program.

[58 FR 40373, July 28, 1993]

PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2103.5—Other Improper Business Practices

Sec.
2103.570 Misleading, Deceptive, or Unfair Advertising.
2103.571 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40373, July 28, 1993, unless otherwise noted.

Subpart 2103.5—Other Improper Business Practices

2103.570 Misleading, Deceptive, or Unfair Advertising.

(a) OPM prepares and makes available to enrolled Federal employees a booklet describing the provisions of the FEGLI Program which includes information about eligibility, enrollment, and general procedures. The booklet also operates as a certification of the employee's enrollment in the FEGLI Program. Because all necessary information is made available by OPM, advertising directed specifically at Federal employees and life insurance agent contacts with Federal employees for the purpose of selling FEGLI Program coverage are prohibited.

(b) The contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The contractor agrees that any advertising material authorized and released by the contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The contractor will use its best efforts to assure that its life insurance agents are aware of and abide by this prohibition.

(c) The contractor's failure to conform to the requirements of this subpart shall be considered by OPM in the determination of the service charge prenegotiation objective.

2103.571 Contract clause.

The clause at 2152.203–70 shall be inserted in FEGLI Program contracts and in subcontracts.

PART 2104—ADMINISTRATIVE MATTERS

Subpart 2104.7—Contractor Records Retention

Sec.

2104.703 Policy.

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40373, July 28, 1993, unless otherwise noted.

Subpart 2104.7—Contractor Records Retention

2104.703 Policy.

In view of the unique payment schedules of FEGLI Program contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1) and LIFAR 2115.106–270.

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

The contractor shall notify the contracting officer in writing of the name(s), title(s), and address(es) of the individual(s) authorized to act on behalf of the contractor regarding a LIFAR Program contract. The notice shall include any restriction(s) upon the authority of the individual(s). Any change to the notice must also be provided to the contracting officer in writing.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2105—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2105.70—Applicability

2105.7001 Applicability.

FAR part 5 has no practical application to the FEGLO Program because OPM does not issue solicitations. Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709.

[58 FR 40373, July 28, 1993]

PART 2106—COMPETITION REQUIREMENTS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2106.70—Applicability

2106.7001 Applicability.

FAR part 6 has no practical application to the FEGLI Program in view of the statutory exception provided by 5 U.S.C. 8709.

[58 FR 40374, July 28, 1993]

PART 2109—CONTRACTOR QUALIFICATIONS

Subpart 2109.4—Debarment, Suspension, and Ineligibility

Sec.

2109.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
2109.409 Certification and contract clause.

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40374, July 28, 1993, unless otherwise noted.

Subpart 2109.4—Debarment, Suspension, and Ineligibility

2109.408 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.

FAR subpart 9.4 is implemented by changing the FAR offeror's certification at FAR 52.209–5 (which is part of a solicitation) to a pre-contract certificate and a contract clause. These provisions reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

2109.409 Certification and contract clause.

(a) The contracting officer may require the precontract certificate in 2152.209–70 to be filed prior to or during negotiations.

(b) The contracting officer shall insert the clause at 2152.209–71 in all FEGLI Program contracts.

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

(a) The contractor must meet the requirements of chapter 87 of title 5, United States Code; parts 870, 871, 872, 873, and 874 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the standards in this subpart. The contractor shall continue to meet these and the following statutory and regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

(b) The contractor must actually be engaged in the life insurance business and must be licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia at the time of application.

(c) The contractor must not be a Federal, State, local or territorial government entity.

(d) The contractor must not be debarred, suspended or ineligible to participate in Government contracting or subcontracting for any reason.

(e) The contractor must keep statistical and financial records regarding the FEGLI Program separate from that of all its other lines of business.

(f) The contractor must enter into rate redeterminations as deemed necessary by OPM.

(g) The contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program.

(h) The contractor must establish and maintain a system of internal control that provides reasonable assurance that:

(1) The payment of claims and other expenses is in compliance with legal, regulatory, and contractual guidelines;

(2) Funds, property, and other FEGLI Program assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

(3) Revenues and expenditures applicable to FEGLI Program operations are properly recorded and accounted for to permit the preparation of reliable financial reporting and to maintain accountability over assets; and,

(4) Data are accurately and fairly disclosed in all reports required by OPM.

(i) The contractor must permit representatives of OPM and of the General Accounting Office to audit and examine records and accounts pertaining to the FEGLI Program at such reasonable times and places as may be designated by OPM or the General Accounting Office.

PART 2110—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Subpart 2110.70—Contract Specifications

Sec.

2110.7000 Scope of subpart.
2110.7001 Definitions.
2110.7002 Contractor investment of FEGLI Program funds.
2110.7003 Significant events.
2110.7004 Contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40374, July 28, 1993, unless otherwise noted.

Subpart 2110.70—Contract Specifications

2110.7000 Scope of subpart.

This subpart prescribes mandatory specifications for performance under FEGLI Program contracts.

2110.7001 Definitions.

Investment income, as used in this subpart, means the net amount on an investment of FEGLI Program funds earned by the contractor after deducting reasonable, necessary, and properly allocated investment expenses.

Significant event, as used in this subpart, means any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the contractor's ability to meet its obligations under the LIFAR.

2110.7002 Contractor investment of FEGLI Program funds.

(a) The contractor is required to invest and reinvest all FEGLI Program funds on hand, including any attributable to the special contingency reserve (as used in 5 U.S.C. 8712), until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the contractor shall seek to maximize investment income.

(b) The contractor is required to credit income earned from its investment of FEGLI Program funds to the FEGLI Program. Thus, the contractor must be able to allocate investment income to the FEGLI Program in an appropriate manner. If the contractor fails to invest funds on hand, properly allocate investment income, or credit any income due to the contract, for whatever reason, it shall return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds should have been originally invested in accordance with 2152.210–70.

2110.7003 Significant events.

The contractor is required to inform the contracting officer of all significant events.

2110.7004 Contract clauses.

(a) The clause at 2152.210–70 shall be inserted in all FEGLI Program contracts.

(b) The clause at 2152.210–71 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2114—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2114.70—Applicability

2114.7001 Applicability.

FAR part 14 has no practical application to the FEGLI Program in view of the statutory exemption provided by 5 U.S.C. 8709, 8714a, 8714b, and 8714c.

[58 FR 40375, July 28, 1993]

PART 2115—CONTRACTING BY NEGOTIATION

Subpart 2115.1—General Requirements for Negotiation

Sec.
2115.106 Contract clauses.
2115.106–270 Specific retention periods.
2115.170 Negotiation authority.

Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

Subpart 2115.6—Source Selection

2115.602 Applicability.

Subpart 2115.8—Price Negotiation

2115.802 Policy.

Subpart 2115.9—Profit

2115.902 Policy.
2115.905 Profit analysis factors.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40375, July 28, 1993, unless otherwise noted.

Subpart 2115.1—General Requirements for Negotiation

2115.106 Contract clauses.

2115.106–270 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215–2, ''Audit—Negotiation,'' the contracting officer shall also insert the clause at 2152.215–70 in all FEGLI Program contracts.

2115.170 Negotiation authority.

The authority to negotiate FEGLI Program contracts is conferred by 5 U.S.C. 8709.

Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

(a) FAR Subpart 15.4 has no practical application to the FEGLI Program because OPM does not issue solicitations.

(b) OPM will announce any opportunities to submit applications to provide life insurance through the FEGLI Program in insurance industry periodicals and other publications as deemed appropriate by OPM. The announcement will contain information on the address to which requests for application packages should be submitted and on deadline dates for submission of completed applications.

(c) Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Offerors voluntarily come forth in accordance with procedures provided in 2115.602.

(d) OPM may approve one or more life insurance companies that, in its judgment, are best qualified to provide life insurance coverage to Federal enrollees.

Subpart 2115.6—Source Selection

2115.602 Applicability.

FAR Subpart 15.6 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

(a) Applications must be signed by an individual with legal authority to enter into a contract on behalf of the company for the dollar level of claims and expenses anticipated.

(b) Applications will be reviewed for evidence of substantial compliance in the following areas:

(1) *Management:* Stable management with experience pertinent to the life insurance industry and, in particular, large group management; sufficient operating experience to enable OPM to evaluate past and expected future performance.

(2) *Marketing:* Past ability to attract and retain large group contracts; steady or increasing amount of group life insurance in force.

(3) *Legal expertise:* Demonstrated competence in researching, compiling, and implementing various Federal and State laws that may impact payment of benefits; ability to defend legal challenges to payment of benefits.

(4) *Financial condition:* Establishment of firm budget projections and demonstrated success in keeping costs at or below those projections on a regular basis; evidence of the ability to sustain operations in the future and to meet obligations under the contract OPM might enter into with the company; adequate reserve levels; assets exceeding liabilities.

(5) *Establishment of office:* Ability to establish an administrative office capable of assessing, tracking, and paying claims.

(6) *Internal controls:* Ability to establish and maintain a system of internal control that provides reasonable assurance that the payment of claims and other expenses will be in compliance with legal, regulatory, and contractual guidelines; funds, property, and other FEGLI Program assets will be safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures applicable to FEGLI Program operations will be properly recorded and accounted for to permit the preparation of timely and accurate financial reporting and to maintain accountability over assets.

Subpart 2115.8—Price Negotiation

2115.802 Policy.

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR Subpart 15.8 shall be implemented by applying cost analysis policies and procedures. To the extent that reasonable or good faith actuarial estimates are used for pricing, such estimates will be deemed acceptable and, if inaccurate, will not constitute defective pricing.

Subpart 2115.9—Profit

2115.902 Policy.

(a) *Risk charge.* (1) Section 8711(d) of title 5, United States Code, provides for payment of a risk charge to FEGLI Program contractors as compensation for the risk assumed under the FEGLI Program. It is appropriate to pay such a charge when substantial risk is borne by the contractor; that is, when the balance in the Employees' Life Insurance Fund is no larger than five times annual claims.

(2) The risk charge is determined by agreement between the contractor and OPM. The amount of risk charge shall be specified in the contract.

(b) *Waiver of the risk charge.* (1) When the Fund balance is greater than five times annual claims, OPM and the contractor may agree that the contractor will relinquish the risk charge in favor of a profit opportunity in the form of a service charge for the contractor. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to surpluses, etc.) that may have been negotiated by the prime contractor with any subcontractor. At no time may both a risk charge and a service charge be paid for the same portion of a policy year.

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.902(a) and 30 days notice of cancellation is provided; or unless the contractor or OPM provide notice of cancellation for any reason 1 year prior to the date cancellation is sought.

(c) Any profit prenegotiation objective (service charge) will be determined on the basis of a weighted guidelines structured approach.

2115.905 Profit analysis factors.

(a) The OPM contracting officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI Program contract. In accordance with the factors defined in FAR 15.905–1, OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the contractor's Basic and Family Optional insurance claims paid in the previous contract year.

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract compliance and will be a measure of the extent and nature of the contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

(2) *Contract cost risk.* OPM will evaluate the contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905–1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost Control.* This factor is based on the contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to measures taken by the contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent Development.* Consideration will be given to independent contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that

are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

Profit factor	Weight ranges
1. Contractor performance	0 to +.0005
2. Contract cost risk	+.000001 to +.00001
3. Federal socioeconomic programs	− to +.00003
4. Capital investment	0 to +.00001
5. Cost control	−.0002 to +.0002
6. Independent development	0 to +.00003

PART 2116—TYPES OF CONTRACTS

Subpart 2116.1—Selecting Contract Types

Sec.
2116.105 Solicitation provision.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.
2116.270–1 Contract clauses.

AUTHORITY: 5 U.S.C. 8709; 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40376, July 28, 1993, unless otherwise noted.

Subpart 2116.1—Selecting Contract Types

2116.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 87 obviate the issuance of solicitations.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.

FEGLI Program contracts will be fixed price with limited cost redetermination plus fixed fee. The premium to the contractor will be based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and will be determined annually. Claims costs, including benefits and administrative expenses, in excess of premiums will be paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs, but may be adjusted as a result of changes in the work to be performed under the contract. The fee will be in the form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and paragraph 2115.902(a)(2) of this subchapter. It will consist of a negotiated amount which will reflect the risk assumed by the contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge shall be payable for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with 2115.905 and negotiated with the contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same portion of a policy year in which a service charge is paid.

2116.270–1 Contract clauses.

(a) The clause at 2152.216–70 shall be inserted in all FEGLI Program contracts when a risk charge is negotiated.

(b) The clause at 2152.216–71 shall be inserted in all FEGLI Program contracts when a service charge is negotiated.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2122—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2122.1—Basic Labor Policies

2122.170 Contract clauses.

The provisions at FAR sections 52.222–21, 52.222–22, 52–222.25 are implemented by changing the word ''offeror'' to ''Contractor'' and the word ''solicitation'' to ''contract'' wherever they appear in the text to reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

[58 FR 40377, July 28, 1993]

PART 2124—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2124.1—Protection of Individual Privacy

Sec.
2124.102 General.
2124.102–70 Policy.
2124.104 Contract clauses.
2124.104–70 Contract clause.

AUTHORITY: 5 U.S.C. 8716, 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40377, July 28, 1993, unless otherwise noted.

Subpart 2124.70—Protection of Individual Privacy

2124.102 General.

2124.102–70 Policy.

Records retained by FEGLI Program contractors on Federal insureds and members of their families serve the contractors' own commercial function of paying FEGLI Program claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for the contractors to keep certain records confidential. The clause at 2152.224–70 addresses this concern.

2124.104 Contract Clauses.

2124.104–70 Contract clause.

The clause at 2152.224–70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2128—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2128.3—Insurance

2128.370 Contract clause.

The contract clause at FAR 52.228–7 is a mandatory clause in FEGLI Program contracts, except paragraph (d) is modified as follows:

(d) The Government's liability under paragraph (c) of this clause is limited to the amount available in the Employee's Life Insurance Fund. Nothing in this contract shall be construed as implying that the Government will make additional funds available later or that Congress will appropriate funds later sufficient to meet deficiencies.

[58 FR 40377, July 28, 1993]

PART 2129—TAXES

Subpart 2129.1—General

Sec.
2129.170 Policy.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.
2129.305 State and local tax exemptions.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.
2129.401–70 FEGLI Program Contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40377, July 28, 1993, unless otherwise noted.

Subpart 2129.1—General

2129.170 Policy.

(a) OPM shall consider taxes as a FEGLI Program cost under 2131.205–41.

(b) For purposes of the limited cost redetermination of a FEGLI Program contract, taxes are not limited to those in effect as of the contract date, but shall include any taxes enacted, modified, or repealed, by legislative, judicial, or administrative means, during the contract year.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.

(a) 5 U.S.C. 8714(c)(1) prohibits the imposition of taxes, fees, or other monetary payment on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision or governmental authority of those entities.

(b) Paragraph (a) of this section shall not be construed to exempt the contractor from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by it from business conducted under the FEGLI Program if the tax, fee, or payment is applicable to a broad range of business activity.

2129.305 State and local tax exemptions.

(a) FAR 29.305 is modified for the FEGLI Program by substituting paragraph (b) of this section in the place of paragraph (b) of FAR 29.305.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.

2129.401–70 FEGLI Program contract clauses.

The fixed-price contract clauses in FAR subpart 29.4 are inappropriate for the FEGLI Program because of the limited cost-redetermination of FEGLI Program contracts. The clauses at FAR 52.229–1, 52.229–2, 52.229–3, and

52.229–4 shall not be inserted into FEGLI Program contracts.

PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2131.1—Applicability

Sec.
2131.103 Contracts with commercial organizations.
2131.109 Advance Agreements.

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.
2131.206–5 Credits.
2131.203 Indirect costs.
2131.205 Selected costs.
2131.205–1 Public relations and advertising costs.
2131.205–3 Bad debts.
2131.205–6 Compensation for personal services.
2131.205–32 Precontract costs.
2131.205–38 Selling costs.
2131.205–41 Taxes.
2131.205–43 Trade, business, technical and professional activity costs.
2131.205–70 Major subcontractor service charge.
2131.205–71 Reinsurer administrative expense costs.
2131.270 Contract clauses.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40378, July 28, 1993, unless otherwise noted.

Subpart 2131.1—Applicability

2131.103 Contracts with Commercial Organizations.

The contracting officer shall incorporate the cost principles and procedures of FAR subpart 31.2 and this part by reference in all FEGLI Program contracts because of the nature of a fixed price with limited cost redetermination plus fixed fee contract.

2131.109 Advance agreements.

FAR 31.109 is applicable to FEGLI Program contracts, except that precontract costs and nonrecurring costs that exceed $25,000 shall not be allowed in the absence of an advance agreement.

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.

2131.201–5 Credits.

The provisions of FAR 31.201–5 shall apply to income, rebates and other credits resulting from benefit payments that include, but are not limited to—

(a) Uncashed and returned checks.

(b) Refunds attributable to litigation with regard to payments of FEGLI Program life insurance monies.

(c) Erroneous benefit payment, refunds, overpayment, and duplicate payment recoveries.

(d) Escheatments.

2131.203 Indirect costs.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a ‘‘dividend or retention formula.’’

2131.205 Selected costs.

2131.205–1 Public relations and advertising costs.

The provisions of FAR 31.205–1 shall be modified to include the following:

(a) Costs of media messages are allowable if approved by the contracting officer and all of the following criteria are met:

(1) The primary objective of the message is to disseminate information on general health and fitness or encouraging healthful lifestyles;

(2) The costs of the contractor’s messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the contractor’s messages to be charged to the FEGLI Program in advance of the policy year.

(b) Costs of media messages that inform enrollees about the FEGLI Program are allowable if approved by the contracting officer.

(c) In those instances where contracting officer approval of the total dollar amount is not solicited in advance, it is incumbent upon the contractor to

show the contracting officer, for subsequent approval, that the costs are reasonable and do not unduly burden the administrative cost to the contract.

(d) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the contractor or subcontractor for the purpose of enhancing its overall image or selling its product or services are not allowable.

2131.205–3 Bad debts.

Erroneous benefit payments. If the contractor or OPM determines that a FEGLI Program benefit has been paid in error for any reason, the contractor shall make a diligent effort to recover such erroneous payment from the recipient. The contracting officer shall allow an unrecovered erroneous payment to be charged to the contract provided the contractor demonstrates that the recovery of the erroneous payment was attempted in accordance with a system that is approved under 2146.270(b) and that either a diligent effort was made to recover the erroneous overpayment or it would not be cost effective to recover the erroneous overpayment. The contractor's compliance with a system that is approved under 2146.270(b) will be deemed to be a diligent effort to recover the erroneous overpayment.

2131.205–6 Compensation for personal services.

FAR 31.205–6 is supplemented as follows: Overtime on a FEGLI Program contract normally would meet the conditions specified in FAR 22.103. Advance approval of the contracting officer is not required for overtime, extra-pay shifts, and multi-shifts.

2131.205–32 Precontract costs.

Precontract costs shall be allowable in accordance with FAR Part 31, but precontract costs that exceed $25,000 shall not be allowable except to the extent allowable under an advance agreement negotiated in accordance with 2131.109.

2131.205–38 Selling costs.

Selling costs are not allowable costs to FEGLI contracts except to the extent that they are attributable to conducting contract negotiations with the Government and for liaison activities involving ongoing contract administration, including the conduct of informational and enrollment activities as directed by the contracting officer.

2131.205–41 Taxes.

(a) FAR 31.205–41, as modified in paragraphs (b) through (e), is applicable to contracts in the FEGLI Program.

(b) As long as 5 U.S.C. 8714(c) or other Federal law prohibits the imposition of taxes, fees, or other monetary payments on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other political subdivision or governmental authority of those entities, payment of such preempted tax is an unallowable expense under FAR 31.205–41(b)(3).

(c) Paragraph (b)(1) of FAR 31.205–41 is not applicable to the FEGLI Program.

(d) Notwithstanding any other provision in FAR 31.205–41, the portion of the contractor's income or excess profits taxes allocated to the FEGLI Program, except those allocated to the risk charge or the service charge, are allowable costs under the FEGLI Program, including any income or excess profit taxes that arise from the operation of this paragraph. Income or excess profits taxes allocated to the risk charge or the service charge are not allowable costs.

(e) Notwithstanding any other provision in FAR 31.205–41, an amount equal to the ''DAC Tax'' is an allowable tax expense under FAR 31.205–41. ''DAC Tax'' means an amount equal to: (1) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program, less (2) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program computed without regard to the operation of 26 U.S.C. 848, which requires that certain policy acquisition expenses be capitalized over a 60- or 120-month period, plus (3) the amount of the increase, if any, in the contractor's Federal, state, and local income tax that results from the operation of this section 2131.205–41(e).

2131.205–43 Trade, business, technical and professional activity costs.

(a) FEGLI Program contractors shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities when the allocable costs of such participation to the FEGLI Program will exceed $2,500 annually and the contractor allocates more than 50 percent of the membership cost of a trade, business, technical, or professional organization to the FEGLI Program.

(b) When approval of costs for membership in an organization is required, the contractor must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing services to FEGLI Program insureds, and that the organization is not engaged in activities such as those cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

2131.205–70 Major subcontractor service charge.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits and any other subcontract for which prior approval is necessary, when costs are determined on the basis of actual costs incurred, any amount that exceeds the allowable cost of a major subcontract (whether entitled service charge, incentive fee, profit, fee, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the risk charge or service charge negotiated between OPM and the contractor.

2131.205–71 Reinsurer administrative expense costs.

A charge of $500 per policy year per reinsurer of the FEGLI Program as set forth in the contract is an allowable cost when documented through an internal accounting entry of the contractor and actually paid. This amount is deemed to be sufficient to reimburse reinsurers for the minor administrative expenses incurred in reinsuring the FEGLI Program.

2131.270 Contract clauses.

The clause at 2152.231–70 shall be inserted in all FEGLI Program contracts.

PART 2132—CONTRACT FINANCING

Subpart 2132.1—General

Sec.
2132.170 Recurring premium payments to contractors.
2132.171 Contract clause.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.
2132.617 Contract clause.

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.
2132.771 Non-commingling of FEGLI Program funds.
2132.772 Contract clause.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40379, July 28, 1993, unless otherwise noted.

Subpart 2132.1—General

2132.170 Recurring premium payments to contractors.

OPM and the contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the contractor will be determined based on this estimate. The premium will be determined annually and will be provided to the contractor in 12 equal monthly installments due on the first day of each month. Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed as a limited cost redetermination.

2132.171 Contract clause.

The clause at 2152.232–70 shall be inserted in all FEGLI Program contracts.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.

FAR 32.607 has no practical application to FEGLI Program contracts. The statutory provisions at 5 U.S.C. 8707 and 8708 authorize joint enrollee and Government contributions to the Employees' Life Insurance Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, contractors may not offset debts to the Fund by a tax credit that is solely a Government obligation.

2132.617 Contract clause.

The clause at FAR 52.232–17 is modified in FEGLI Program contracts to exclude the parenthetical phrase ''(net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)).''

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.

Insurance premium payments and a special contingency reserve are made available to FEGLI Program contractors in accordance with 5 U.S.C. 8712 and 8714.

2132.771 Non-commingling of FEGLI Program funds.

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the contractor's books and records.

(b) This requirement may be modified by the contracting officer in accordance with the clause at 2152.232–71 when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

2132.772 Contract clause.

The clause at 2152.232–71 shall be inserted in all FEGLI Program contracts.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

The clause set forth in 2152.232–72 shall be inserted in all FEGLI Program contracts.

PART 2133—PROTESTS, DISPUTES, AND APPEALS

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2133.2—Disputes and Appeals

2133.270 Designation of Board of Contract Appeals.

The Armed Services Board of Contract Appeals [ASBCA] serves as the board of contract appeals for the FEGLI Program. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

[58 FR 40379, July 28, 1993]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

Sec.
2137.102 Policy.
2137.110 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2137.1—Service Contracts—General

2137.102 Policy.

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated.

(b) The contractor shall be reimbursed for all reasonable phase-in and phase-out costs (i.e., costs incurred within the agreed upon period after contract termination that result from phase-in and phase-out operations). The contractor also shall receive a risk or service charge for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the risk or service charge for the final contract year. The amount of risk or service charge shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress.

2137.110 Contract clause.

The clause at 2152.237–70 shall be inserted in all FEGLI Program contracts in lieu of the clause at 52.237–3 that is prescribed by FAR 37.110(c).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2143—CONTRACT MODIFICATIONS

Subpart 2143.1—General

Sec.
2143.101 Definitions.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2143.1—General

2143.101 Definitions.

The effective date of a FEGLI contract modification is as defined in FAR 43.101, except to the extent that the definition conflicts with LIFAR 2101.370.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

The clause at 2152.243–70 shall be inserted in all FEGLI Program contracts in lieu of the clauses in FAR 52.243–1 that are prescribed by FAR 43.205(a).

PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

Sec.
2144.102 Policy.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2144.1—General

2144.102 Policy.

For all FEGLI Program contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

The clause set forth at 2152.244–70 shall be inserted in all FEGLI Program contracts.

PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

Sec.
2146.201 General.
2146.270 FEGLI Program quality assurance requirements.
2146.270–1 Contract clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

Subpart 2146.2—Contract Quality Requirements

2146.201 General.

(a) This part prescribes policies and procedures to ensure that services acquired under the FEGLI Program contract conform to the contract's quality requirements.

(b) OPM shall evaluate the contractor's system of internal controls under the quality assurance program required by 2146.270 prior to each contract year and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this Subpart. After the initial review, each annual review may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

2146.270 FEGLI Program quality assurance requirements.

(a) The contractor shall develop and apply a quality assurance program specifying procedures for assuring contract quality, as directed by the contracting officer. At a minimum, the program should include procedures to address:

(1) Accuracy of payments and recovery of overpayments;

(2) Timeliness of payments to beneficiaries;

(3) Quality of services and responsiveness to beneficiaries;

(4) Quality of service and responsiveness to OPM; and

(5) Detection and recovery of fraudulent claims.

(b) The contractor shall prepare overpayment recovery guidelines to include a system of internal control for approval annually by the contracting officer. The contracting officer may withdraw such approval with 90 days' notice of prospective withdrawal.

(c) The contracting officer may order the correction of a deficiency or a modification in the contractor's services and/or quality assurance program. The contractor shall take the necessary action promptly to implement the contracting officer's order. If the contracting officer orders the correction of a deficiency or a modification of the contractor's services and/or quality assurance program pursuant to this paragraph after the contract year has begun, the costs incurred in correcting the deficiency or making the modification will not be considered to the contractor's detriment in the cost control factor of the service charge [if applicable] for the following contract year. However, if there is a deficiency, the deficiency itself may be taken into consideration.

2146.270–1 Contract clause.

The clause at 2152.246–70 shall be inserted in all FEGLI Program contracts.

PART 2149—TERMINATION OF CONTRACTS

Sec.

2149.002 Applicability.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.

2149.505–70 FEGLI Program contract termination clause.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 58 FR 40380, July 28, 1993, unless otherwise noted.

2149.002 Applicability.

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this chapter. The procedures for termination of FEGLI Program contracts shall be those contained in FAR part 49. For the purpose of this part, terminate means to ''discontinue'' as used in 5 U.S.C. 8709(c).

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the contractor. A life insurance contract entered into by OPM may be terminated at the end of the 31st day after default for nonpayment by OPM [see 2152.232–70, Payments].

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the contractor's receipt of OPM's notice to terminate.

(4) The contractor may terminate its contract with OPM at the end of any policy year when notice of intent to terminate is given to OPM in writing at least 60 days prior to the end of the policy year (i.e., no later than July 31).

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated. Consequently, the contract termination procedures contained in this paragraph must be used in conjunction with 2137.102, 2137.110, and the provisions of the ''Continuity of Services'' clause at 2152.237–70.

(c) *Settlement.* The procedures for settlement of contracts after they are terminated shall be those contained in FAR Part 49.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.

2149.505–70 FEGLI Program contract termination clause.

The clause in 2152.249–70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2152—PRECONTRACT PROVISIONS AND CONTRACT CLAUSES

Sec.
2152.070 Applicable clauses.

Subpart 2152.2—Text of Provisions and Clauses

2152.203–70 Misleading, deceptive, or unfair advertising.
2152.209–70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.
2152.209–71 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.
2152.210–70 Investment income.
2152.210–71 Notice of significant events.
2152.215–70 Contractor records retention.
2152.216–70 Fixed price with limited cost redetermination—risk charge.
2152.216–71 Fixed price with limited cost redetermination—service charge.
2152.224–70 Confidentiality of records.
2152.231–70 Accounting and allowable cost.
2152.232–70 Payments.
2152.232–71 Non-commingling of FEGLI Program funds.
2152.232–72 Approval for assignment of claims.
2152.237–70 Continuity of services.
2152.243–70 Changes.
2152.244–70 Subcontracts.
2152.246–70 Quality assurance requirements.
2152.249–70 Renewal and termination.

Subpart 2152.3—Provision and Clause Matrix

2152.370 Use of the matrix.

AUTHORITY: 5 U.S.C. 8716; 40 U.S.C. 486(c), 48 CFR 1.301.

SOURCE: 58 FR 40381, July 28, 1993, unless otherwise noted.

2152.070 Applicable clauses.

The clauses of FAR subpart 52.2 specified below shall be applicable to FEGLI Program contracts. The most recent edition of the clause in the FAR shall be applied unless otherwise provided in the contract.

SECTION AND CLAUSE TITLE

52.202–1 Definitions
52.203–1 Officials Not to Benefit
52.203–3 Gratuities
52.203–5 Covenant Against Contingent Fees
52.203–6 Restrictions on Subcontractor Sales to the Government
52.203–7 Anti-Kickback Procedures
52.203–9 Requirement for Certificate of Procurement Integrity—Modification
52.203–10 Price or Fee Adjustment for Illegal or Improper Activity
52.203–12 Limitation on Payments to Influence Certain Federal Transactions
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.215–1 Examination of Records by Comptroller General
52.215–2 Audit—Negotiation
52.215–22 Price Reduction for Defective Cost or Pricing Data
52.215–24 Subcontractor Cost or Pricing Data
52.215–27 Termination of Defined Benefit Pension Plans
52.215–30 Facilities Capital Cost of Money
52.215–31 Waiver of Facilities Capital Cost of Money
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
52.219–13 Utilization of Women-Owned Small Businesses
52.220–3 Utilization of Labor Surplus Area Concerns
52.222–1 Notice to the Government of Labor Disputes
52.222–3 Convict Labor
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation-General
52.222–21 Certification of NonSegregated Facilities
52.222–22 Previous Contracts and Compliance Reports
52.222–25 Affirmative Action Compliance
52.222–26 Equal Opportunity
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts
52.222–29 Notification of Visa Denial
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222–36 Affirmative Action for Handicapped Workers
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.222–41 Service Contract Act of 1965, as Amended
52.223–2 Clean Air and Water
52.223–6 Drug-Free Workplace
52.227–1 Authorization and Consent
52.227–2 Notice and Assistance

52.232–9 Limitation on Withholding of Payments
52.232–17 ; 2132.617 Interest
52.232–23 Assignment of Claims
52.232–28 Electronic Funds Transfer Payment Method
52.233–1 Disputes (Alternate I)
52.242–1 Notice of Intent to Disallow Costs
52.242–13 Bankruptcy
52.244–5 Competition in Subcontracting
52.245–2 Government Property (Fixed-Price Contracts)
52.246–4 Inspection of Services—Fixed Price
52.246–25 Limitation of Liability—Services
52.247–63 Preference for U.S.-Flag Air Carriers
52.249–2 Termination for Convenience of the Government (Fixed-Price)
52.249–8 Default (Fixed Price Supply and Service)
52.251–1 Government Supply Sources
52.252–4 Alterations in Contract
52.252–6 Authorized Deviations in Clauses

Subpart 2152.2—Text of Provisions and Clauses

2152.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 2103.571, insert the following clause:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (OCT 1993)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The Contractor agrees to use its best efforts to assure that its agents are aware of and abide by this provision.

The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

(End of Clause)

2152.209–70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.

As prescribed in 2109.409(a), the contracting officer may require a potential contractor to provide the following certification:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

(a)(1) The undersigned certifies, to the best of its knowledge and belief, that—

(i) The undersigned and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The undersigned has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) ''Principals,'' for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the undersigned subject to prosecution under section 1001, title 18, United States Code.

(b) The undersigned shall provide immediate written notice to the Contracting Officer if, at any time prior to the contract award, the undersigned learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the actions mentioned in paragraph (a) of this provision exists will not necessarily result in the withholding of an award under a contract under the FEGLI Program. However, the certification, or the undersigned's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the undersigned's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in this certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a). The knowledge and information of the undersigned is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in (a) is a material representation of fact upon which reliance is placed during negotiation of a FEGLI Program contract. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this certification for default.

(Name of Company)

By: _____

(Signature)

_____

(Name and Title of Signatory)

Date signed: _____

(End of Certificate)

2152.209–71 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

As prescribed in 2109.409(b), insert the following clause:

CERTIFICATION BY FEGLI PROGRAM CONTRACTOR REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

(a)(1) The Contractor certifies, to the best of its knowledge and belief, that—

(i) The Contractor and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The Contractor has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) ''Principals,'' for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Contractor subject to prosecution under section 1001, title 18, United States Code.

(b) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A Contractor's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Contractor's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the Contractor's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer in making this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

(End of Clause)

2152.210–70 Investment income.

As prescribed in 2110.7004(a), insert the following clause:

INVESTMENT INCOME (OCT 1993)

(a) The Contractor shall invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor shall seek to maximize investment income.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraphs (a) or (b) of this clause, the Contractor shall pay to the Office of Personnel Management (OPM) the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. ''Failed to comply with paragraphs (a) or (b)'' means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d)(1) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(2) Investment income lost as a result of failure to credit income due the contract or failure to place funds on hand in income-producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), *during* the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid *after* the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury until the amount is paid [see FAR 32.614–1].

(End of Clause)

2152.210–71 Notice of significant events.

As prescribed in 2110.7004(b), insert the following clause:

NOTICE OF SIGNIFICANT EVENTS (OCT 1993)

(a) The Contractor agrees to notify OPM of any significant event within 10 working days after the Contractor becomes aware of it. As used in this section, a ''significant event'' is any occurrence of anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of 25 percent or more of the Contractor's assets within a six-month period;

(2) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Contractor's obligations under this contract;

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a policy year;

(4) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(5) The withdrawal of, or notice of intent to withdraw, by any State, its license to do business or any other change of status under Federal or State law;

(6) The Contractor's default on a loan or other financial obligation;

(7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;

(8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;

(9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;

(10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or

(11) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an opinion on

the annual accounting statements required by OPM for the FEGLI Program.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action;

(2) Making a downward adjustment to the weight in the ''Contractor Performance'' factor of the service charge; or,

(3) Withholding payments of the service charge.

(c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification that is charged to the FEGLI Program exceeds $200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI contract.

(End of Clause)

2152.215–70 Contractor records retention.

As prescribed in 2115.106–270, insert the following clause:

CONTRACTOR RECORDS RETENTION (OCT 1993)

Notwithstanding the provisions of FAR 52.215–2(d), ''Audit-Negotiation,'' the Contractor will retain and make available all records applicable to a contract term that support the annual statement of operations for a period of 5 years after the end of the contract term to which the records relate. Individual enrollee and/or beneficiary claim records shall be maintained for 10 years after the end of the policy year to which the claim records relate.

(End of Clause)

2152.216–70 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.270–1(a), insert the following clause when a risk charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—RISK CHARGE (OCT 1993)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge.

(b) OPM shall pay the Contractor the risk charge specified in Appendix _____ for the risk assumed in performing this contract.

(End of clause)

2152.216–71 Fixed price with limited cost redetermination—service charge.

As prescribed in 2116.270–1(b), insert the following clause when a service charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—SERVICE CHARGE (OCT 1993)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge.

(b) OPM shall pay the Contractor the service charge specified in Appendix _____.

(End of clause)

2152.224–70 Confidentiality of records.

As prescribed in 2124.104–70, insert the following clause:

CONFIDENTIALITY OF RECORDS (OCT 1993)

(a) The Contractor shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM's notice of systems of records.

(b) The Contractor shall also hold all medical records, evidence of insurability for insurance coverage, designations of beneficiaries, amounts of insurance, and information relating thereto, of the insured and family members confidential except for disclosure as follows:

(1) as may be reasonably necessary for the administration of this contract;

(2) as authorized by the insured or his or her estate;

(3) as necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions; and

(4) as necessary to audit the contract.

(End of Clause)

2152.231–70 Accounting and allowable cost.

As prescribed in 2131.270, insert the following clause:

ACCOUNTING AND ALLOWABLE COST (OCT 1993)

(a) *Annual Accounting Statement.* (1) The Contractor shall prepare annually an accounting statement summarizing the financial results of the FEGLI Program for the previous contract year. This statement shall be prepared in accordance with the requirements issued annually by OPM and shall be due to OPM in accordance with a date established by those requirements.

(2) The Contractor shall have the most recent financial statement for the FEGLI Program audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM along with the annual accounting statement.

(3) Based on the results of either the independent audit or a Government audit, the annual accounting statements for the FEGLI Program may be (i) adjusted by amounts found not to constitute properly allocable or allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a policy year shall be the actual, necessary, reasonable, and allocable amounts incurred with proper justification and accounting support, determined in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 2131.2 of the Federal Employees Group Life Insurance Program Acquisition Regulation (LIFAR) applicable on October 1 of each year, and the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Claims costs consist of payments made and costs incurred for life insurance and accidental death and dismemberment insurance on behalf of FEGLI Program subscribers, including interest paid on delayed claims, less any overpayments (subject to the terms of 2131.205–3), refunds, or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable, and reasonable expenses incurred in the adjudication of beneficiary claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, insurance and reinsurance premiums, the cost of investigation and settlement of policy claims, the cost of maintaining files regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(iii) *Investment income.* Investment income represents the amount earned by the Contractor after deducting reasonable, necessary, and properly allocable investment expenses as a result of investing of FEGLI Program funds. The direct or allocable indirect expenses incurred with respect to the investment of Program funds, such as brokerage fees, are netted against investment income earned rather than as part of administrative expenses.

(c) *Certification of Annual Accounting Statement.* (1) The Contractor shall certify the annual accounting statement in the form set forth in paragraph (c)(2) of this clause. The certificate shall be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and shall be returned with the annual accounting statement.

(2) The certification required shall be in the following form:

CERTIFICATION OF ANNUAL ACCOUNTING STATEMENT

This is to certify that I have reviewed this accounting statement and, to the best of my knowledge and belief, attest that:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this policy year in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

Contractor Name: _____

(Chief Executive Officer for FEGLI Operations)

Date signed: _____

(Chief Financial Officer for FEGLI Operations)

Date signed: _____

(Type or print and sign)
(End of Certificate)
(End of Clause

2152.232–70 Payments.

As prescribed in 2132.171, insert the following clause:

PAYMENTS (OCT 1993)

(a) OPM will provide to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost or for Contractor fraud, a fixed premium once per month on the first business day of the month. The premium will be determined by an estimate of costs for the contract year as provided in Section _____, and will be redetermined annually. In addition, an annual reconciliation of premiums and actual costs will be performed, and additional payment by OPM or reimbursement by the Contractor will be paid as necessary.

(b) If OPM fails to provide the premium in full by the due date, a grace period of 31 days shall be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued on the premium due date. The contract shall continue in force during the grace period.

(c) If OPM fails to provide any premiums within the grace period, the contract shall be discontinued at the end of the 31st day of the grace period, unless the Contractor and OPM agree to continue the contract. OPM shall be liable to the Contractor for all premiums then due and unpaid. If during the grace period OPM presents written notice to the Contractor that the contract is to be discontinued before the expiration of the grace period, the contract shall be discontinued the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for discontinuance. OPM shall be liable to the Contractor for all premiums then due and unpaid.

(d) The specific premium rates, charges, allowances and limitations applicable to the contract are set forth in 5 CFR Parts 870 through 874, 48 CFR chapter 1, LIFAR, and this contract.

(e) In accordance with FAR 52.243–2, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer shall make an equitable adjustment to the estimate on which the monthly premiums are based.

(f) In the event this contract is terminated in accordance with LIFAR Part 2149, the special contingency reserve held by the Contractor shall be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

(End of Clause)

2152.232–71 Non-commingling of FEGLI Program funds.

As prescribed in 2132.772, insert the following clause:

NON–COMMINGLING OF FUNDS (OCT 1993)

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the Contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the Contractor's books and records.

(b) The Contractor may request a modification of this requirement from the Contracting Officer. The modification shall be requested in advance and the Contractor shall demonstrate that accounting techniques have been established that will clearly measure FEGLI Program cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(End of Clause)

2152.232–72 Approval for assignment of claims.

As prescribed in 2132.806, insert the following clause:

APPROVAL FOR ASSIGNMENT OF CLAIMS (OCT 1993)

(a) The Contractor shall not make any assignment of FEGLI Program funds under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment of FEGLI Program funds shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of Clause)

2152.237–70 Continuity of Services.

As prescribed in 2137.110, insert the following clause:

CONTINUITY OF SERVICE (OCT 1993)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration or termination, including termination by the Contractor, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in and phase-out services for up to 10 months after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in and phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in and phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and

allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) and a risk or service charge not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration.

(End of Clause)

2152.243–70 Changes.

As prescribed in 2143.205, insert the following clause:

CHANGES (OCT 1993)

(a) Except as provided in paragraph (f) of this clause, the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e.: hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, or the Contractor's liability under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause with 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(f) The Contracting Officer shall not make any changes pursuant to paragraph (a) of this clause to conform this contract to any amendment in the LIFAR before the effective date of the amendment as provided for in LIFAR 2101.370.

(End of Clause)

2152.244–70 Subcontracts.

As prescribed by 2144.204, insert the following clause:

SUBCONTRACTS (OCT 1993)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $200,000 and more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

(b) The advance notification required by paragraph (a) of this clause shall include the following information:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the

effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraph (a), (b), and (c) of this clause where the Contractor and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiations of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Office to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Contractor of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provisions of Section _____, Service Charge.

(g) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(End of Clause)

2152.246–70 Quality assurance requirements.

As prescribed by 2146.270–1 insert the following clause:

QUALITY ASSURANCE REQUIREMENTS (OCT 1993)

(a) The Contractor shall develop and apply a quality assurance program as directed by the Contracting Officer pursuant to LIFAR 2146.270.

(b) The Contractor shall keep complete records of its quality assurance procedures and the results of their implementation and make them available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Contracting Officer or his or her representative has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract and for as long afterward as the contract requires. The Contracting Officer or his or her representative shall perform any inspections and tests in a manner that will not unduly delay the work.

(End of Clause)

2152.249–70 Renewal and termination.

As prescribed in 2149.505–70, insert the following clause:

RENEWAL AND TERMINATION (OCT 1993)

(a) This contract renews automatically each October 1st, unless written notice of termination is given by the Contractor not less than 60 calendar days before the renewal date.

(b) This contract may be terminated by OPM at any time for default by the Contractor. This contract terminates at the end of the 31st day after default for nonpayment by the Government, unless the Contractor and OPM agree to continue the contract.

(c) This contract may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice of termination.

(d) Upon termination of the contract, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, 2137.110, and the provisions of the ''Continuity of Services'' clause at 2152.237–70.

(e) After receipt of a termination notice, the prime Contractor shall, unless directed otherwise by the Contracting Officer, terminate all subcontracts to the extent that they relate to the performance of the FEGLI Program contract. The failure of the prime Contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not affect the Contracting Officer's right to require the

termination of the subcontract; or increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(End of Clause)

Subpart 2152.3—Provision and Clause Matrix

2152.370 Use of the matrix.

(a) The matrix in this section lists the FAR and LIFAR clauses to be used with the FEGLI Program contract. The clauses are to be incorporated in the contract in full text.

(b) Certain contract clauses are mandatory for FEGLI Program contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or LIFAR. An ''M'' in the ''Use Status'' column indicates that the clause is mandatory. An ''A'' indicates that the clause is to be used only when the applicable conditions are met.

FEGLI PROGRAM CLAUSE MATRIX

Clause No.	Text reference	Title	Use status
FAR 52.202–1	FAR 2.2	Definitions	M
FAR 52.203–1	FAR 3.102–2	Officials Not to Benefit	M
FAR 52.203–3	FAR 3.202	Gratuities	M
FAR 52.203–5	FAR 3.404(c)	Covenant Against Contingent Fees	M
FAR 52.203–6	FAR 3.503–2	Restrictions of Subcontractor Sales to the Government	M
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M
FAR 52.203–9	FAR 3.104–10(b)	Requirement for Certificate of Procurement Integrity—Modification.	M
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M
2152.203–70	2103.571	Misleading, Deceptive, or Unfair Advertising	M
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M
2152.209–71	2109.409(b)	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.	M
2152.210–70	2110.7004(a)	Investment Income	M
2152.210–71	2110.7004(b)	Notice of Significant Events	M
FAR 52.215–1	FAR 15.106–1(b)	Examination of Records by Comptroller General	M
FAR 52.215–2	FAR 15.106–2(b)	Audit—Negotiation	M
FAR 52.215–22	FAR 15.804–8(a)	Price Reduction for Defective Cost or Pricing Data	M
FAR 52.215–24	FAR 15.804–8(c)	Subcontractor Cost or Pricing Data	M
FAR 52.215–27	FAR 15.804–8(e)	Termination of Defined Benefit Pension Plans	M
FAR 52.215–30	FAR 15.904	Facilities Capital Cost of Money	M
FAR 52.215–31	FAR 15.904	Waiver of Facilities Capital Cost of Money	A
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions.	A
2152.215–70	2115.106–270	Contractor Records Retention	
2152.216–70	2116.270–1(a)	Fixed Price With Limited Cost Redetermination—Risk Charge.	A
2152.216–71	2116.270–1(b)	Fixed Price With Limited Cost Redetermination—Service Charge.	A
FAR 52.219–8	FAR 19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	M
FAR 52.219–13	FAR 19.902	Utilization of Women-Owned Small Businesses	M
FAR 52.220–3	FAR 21.302(a)	Utilization of Labor Surplus Area Concerns	M
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M
FAR 52.222–3	FAR 22.202	Convict Labor	M
FAR 52.222–4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M
FAR 52.222–21	FAR 22.810(a)(1)	Certification of NonSegregated Facilities	M
FAR 52.222–22	FAR 22.810(a)(2)	Previous Contracts and Compliance Reports	M
FAR 52.222–25	FAR 22.810(d)	Affirmative Action Compliance	M
FAR 52.222–26	FAR 22.810(e)	Equal Opportunity	M
FAR 52.222–28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts	M
FAR 52.222–29	FAR 22.810(h)	Notification of Visa Denial	A
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers	M
FAR 52.222–37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.	M
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A
FAR 52.223–6	FAR 23.505(c)	Drug-Free Workplace	M
2152.224–70	2124.104–70	Confidentiality of Records	M
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M

FEGLI PROGRAM CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status
FAR 52.227–2	FAR 27.202–2	Notice and Assistance	A
FAR 52.228–7	FAR 28.311–2 Modification: 2128.370	Insurance—Liability to Third Persons	M
2152.231–70	2131.270	Accounting and Allowable Cost	M
FAR 52.232–9	FAR 32.111(c)(2)	Limitation on Withholding of Payments (Modified)	M
FAR 52.232–17	FAR 32.617 Modification: 2132.617	Interest	M
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A
FAR 52.232–28	FAR 32.908(d)	Electronic Funds Transfer Payment Method	M
2152.232–70	2132.171	Payments	M
2152.232–71	2132.772	Non-Commingling of FEGLI Program Funds	M
2152.232–72	2132.806	Approval for Assignment of Claims	M
FAR 52.233–1	FAR 33.214	Disputes (Alternate I)	M
2152.237–70	2137.110	Continuity of Services	M
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M
FAR 52.242–13	FAR 42.903	Bankruptcy	M
2152.243–70	2143.205	Changes—FEGLI Program Contract	M
FAR 52.244–5	FAR 44.204(e)	Competition in Subcontracting	M
2152.244–70	2144.204	Subcontracts	M
4FAR 52.245–2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M
FAR 52.246–4	FAR 46.304	Inspection of Services—Fixed-Price	M
FAR 52.246–25	FAR 46.805(a)(4)	Limitation of Liability—Services	M
2152.246–70	2146.270–1	Quality Assurance Requirements	M
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M
FAR 52.249–2	FAR 49.502(b)(1)	Termination for Convenience of the Government (Fixed Price).	M
FAR 52.249–8	FAR 49.504(a)(1)	Default (Fixed-Price Supply and Service)	M
FAR 52.249–14	FAR 49.505(d)	Excusable Delays	M
2152.249–70	2149.505–70	Renewal and Termination	M
FAR 52.251–1	FAR 51.107	Government Supply Sources	A
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	M
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M

CHAPTER 23—SOCIAL SECURITY ADMINISTRATION

(Parts 2300 to 2399)

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 2301—SOCIAL SECURITY ACQUISITION REGULATION SYSTEM

Subpart 2301.1—Purpose, Authority, Issuance

2301.101 Purpose.
2301.103 Authority.
2301.104 Applicability.
2301.105 Issuance.
2301.105–1 Publication and code arrangement.
2301.105–2 Arrangement of regulations.

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

SOURCE: 61 FR 50738, Sept. 27, 1996, unless otherwise noted.

Subpart 2301.1—Purpose, Authority, Issuance

2301.101 Purpose.

(a) The Social Security Acquisition Regulation (SSAR) is issued to establish uniform acquisition policies and procedures for the Social Security Administration (SSA) which conform to the Federal Acquisition Regulation (FAR) System.

(b) The SSAR implements and supplements the FAR. (Implementing material expands upon or indicates the manner of compliance with related FAR material. Supplementing material refers to policies or procedures which have no corresponding counterpart in the FAR.)

(c) The SSAR contains only formal agency policies and procedures which have a significant effect beyond SSA's internal operating procedures or which have a significant cost or administrative impact on contractors or offerors.

2301.103 Authority.

The SSAR is prescribed under the authority of 5 U.S.C. 301 and section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)).

2301.104 Applicability.

The FAR and SSAR apply to all SSA acquisitions as stated in FAR 1.104. Unless specified otherwise, the FAR and SSAR apply to acquisitions within and outside the United States.

2301.105 Issuance.

2301.105–1 Publication and code arrangement.

(a) The SSAR is also published in the same forms as indicated in FAR 1.105–1(a).

(b) The SSAR is issued in the Code of Federal Regulations (CFR) as Chapter 23 of Title 48, Social Security Acquisition Regulation (SSAR). It may be referenced as ''48 CFR chapter 23.''

2301.105–2 Arrangement of regulations.

(a) *General.* The SSAR conforms to the FAR with respect to divisional arrangements; i.e., subchapters, parts, subparts, sections, subsections, and paragraphs.

(b) *Numbering.* The FAR System of numbering permits the keying of the same or similar subject matter throughout Chapters 1 (FAR) and 23 (SSAR) of Title 48, CFR. However, SSA's system varies somewhat from that of the FAR numbering scheme, in the numbering to the left of the decimal point. Whereas the FAR only identifies the part number of 48 CFR to the left of the decimal point, our corresponding reference identifies the chapter as well. For example, the FAR paragraph corresponding to this SSAR paragraph is numbered 1.105–2(b) where ''1'' is the part number (may be one or two digits and is followed by a decimal point), ''1'' (to the right of the decimal point) is the subpart number, ''05'' (always two digits) is the section number, ''2'' is the subsection number (always hyphenated), and ''(b)'' is the paragraph reference. This SSAR reference is 2301.105–2(b) where the ''23'' is the chapter number assigned to SSA and the ''01'' represents the part number (part numbers will always be two digits for agencies implementing the FAR). The remaining numbers to the right of the decimal point are identical to and reflect the same divisions as in the FAR numbering scheme.

(c) *References and citations.* (1) Unless otherwise stated, references indicate parts, subparts, sections, subsections, etc., of this regulation, the SSAR.

(2) This regulation shall be referred to as the Social Security Acquisition Regulation (SSAR). Any reference may be cited as ''SSAR'' followed by the appropriate number. Within the SSAR, the number alone will be used.

(3) Citations of authority shall be incorporated where necessary. All FAR reference numbers shall be preceded by ''FAR.''

CHAPTER 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

(Parts 2400 to 2499)

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SUBCHAPTER A—GENERAL

PART 2401—FEDERAL ACQUISITION REGULATION SYSTEM

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2401.603–2 Selection.
2401.603–3 Appointment.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7697, Mar. 1, 1984, unless otherwise noted.

2401.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Acquisition Regulation (FAR) through the establishment of the HUD Acquisition Regulation (HUDAR), which prescribes the Department's procurement policies and procedures under the FAR System.

Subpart 2401.1—Purpose, Authority, Issuance

2401.100 Scope of subpart.

This subpart describes the HUDAR and states its relationship to the FAR System. This subpart also provides the explanation of the purpose and the authorities under which the HUDAR is issued.

2401.101 Purpose.

The Department of Housing and Urban Development Acquisition Regulation is hereby established as chapter 24 of the Federal Acquisition Regulation System (48 CFR chapter 24). It is issued to provide uniform Departmental policies and procedures for the acquisition of supplies, personal property and non-personal services by the Department's contracting activities and to make these policies and procedures readily available to Departmental personnel and to the public.

2401.103 Authority.

The HUDAR is prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), the Secretary's delegation effective January 19, 1976, 41 FR 2665, and the general authorization in FAR 1.301.

[49 FR 7697, Mar. 1, 1984. Redesignated at 61 FR 19470, May 1, 1996]

2401.104 Applicability.

All acquisition of personal property and non-personal services (including construction) by HUD, except as may be otherwise authorized by law, must be accomplished in accordance with the HUDAR and the FAR.

[49 FR 7697, Mar. 1, 1984. Redesignated at 61 FR 19470, May 1, 1996]

2401.105 Issuance.

2401.105–2 Arrangement of regulations.

(a) *General.* Chapter 24 is divided into parts, subparts, sections, subsections, paragraphs and further subdivisions as necessary.

(b) *Numbering.* Generally, the numbering system and part, subpart, and section titles used in the HUDAR conform with those used in the FAR or as follows:

(1) When the HUDAR implements or deviates from a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or deviation will be numbered and captioned where possible to correspond to the FAR part, subpart, section, subsection, or paragraph. For example, FAR subpart 1.4, Deviations, is implemented in HUD's acquisition regulations at subpart 2401.4, Deviations. (The ''24'' in the number indicates what chapter of title 48 contains the HUDAR.)

(2) When HUD supplements material contained in the FAR, it is given a unique number containing the numerals ''70'' or higher. The rest of the number will parallel the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, FAR 14.407, Award, does not contain a provision for the steps to be taken when only one bid is received. The HUDAR provides this information. Since the subject matter supplements what is contained in FAR 14.407, the HUDAR section supplementing the FAR is numbered 2414.407–70.

(3) Where material in the FAR requires no implementation or deviation, there is no corresponding numbering in the HUDAR. Therefore, there may be gaps in the HUDAR sequence of numbers where the FAR, as written, is applicable to the HUDAR and requires no further implementation.

(c) *Citation.* The HUDAR will be cited in accordance with FEDERAL REGISTER standards approved for the FAR. Thus, this section when referred to in the HUDAR is cited as 2401.104–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as ''48 CFR 2401.104–2(c).'' Any section of the HUDAR may be formally identified by the section number, e.g., ''HUDAR 2401.104–2.'' In the HUDAR, any reference to the FAR will be indicated by ''FAR'' followed by the section number, for example FAR 37.108.

[49 FR 7697, Mar. 1, 1984, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19470, May 1, 1996]

2401.106 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 10 or more persons. HUD has received approval from OMB to collect information under the provisions of its Acquisition Regulation. The OMB Approval Number is 2535–0091.

[50 FR 46575, Nov. 8, 1985. Redesignated at 61 FR 19470, May 1, 1996]

Subpart 2401.3—Agency Acquisition Regulations

2401.301 Policy.

(a)(1) *Implementation.* The HUDAR implements and supplements the FAR. Implementation material is that which expands upon related FAR material. Supplementing material is that for which there is no counterpart in the FAR.

2401.302 Limitations.

(c) *Exclusions.* Certain HUD policies and procedures which come within the scope of this chapter are not included in the HUDAR. Not included is a policy or procedure of an internal nature or which is expected to be effective for a period of less than six months.

Subpart 2401.4—Deviations

2401.403 Individual deviations.

In individual cases, proposed deviations from the FAR or HUDAR shall be submitted to the Senior Procurement Executive (see 2401.601–70) for approval or other necessary or appropriate action. A supporting statement shall be submitted with the proposed deviation indicating briefly the nature of the deviation and the reasons for granting the deviation, consistent with

FAR 1.402. The contract file shall include a copy of the request submitted and the approval. In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

[49 FR 7697, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986; 53 FR 46533, Nov. 17, 1988]

2401.404 Class deviations.

For deviations which affect more than one contracting action, proposed deviations from the FAR or HUDAR shall be submitted to the Senior Procurement Executive for approval or other necessary or appropriate action. Requests for deviations shall be supported by statements which fully disclose the nature of the deviation and the need there of. The Senior Procurement Executive will consider the proposal on an expedited basis and in the case of a proposed FAR deviation will comply with FAR 1.404.

[49 FR 7697, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2401.6—Career Development, Contracting Authority, and Responsibilities

2401.601 General.

2401.601–70 Senior Procurement Executive.

The Assistant Secretary for Administration is the Department's Senior Procurement Executive and is responsible for all Departmental procurement policy, regulations, and procedures, except for internal procedures related to procurement transactions conducted by the Government National Mortgage Association. The Senior Procurement Executive is also responsible for the development of HUD's procurement system standards, evaluation of the system in accordance with approved criteria, enhancement of career management of the procurement work force, and certification to the Secretary that the Department's procurement system meets approved criteria.

[57 FR 59787, Dec. 15, 1992]

2401.601–71 Office of Procurement and Contracts.

Except as provided otherwise is this chapter, the Office of Procurement and Contracts, in the Office of the Assistant Secretary for Administration, is responsible for all Departmental procurement.

[57 FR 59787, Dec. 15, 1992]

2401.601–72 Government National Mortgage Association.

(a) The President, GNMA, may exercise authority under section 306(g) of the National Housing Act and 24 CFR part 390 to enter into agreements with the issuers of mortgage-backed securities. The FAR and the HUDAR do not apply to these transactions, including the assignation of servicing requirements to a substitute servicer or issuer in the event of a default by, or other termination of, an issuer.

(b) Sales or guarantees of securities by GNMA are outside the scope of this part.

(c) All contracts that are not within the scope of paragraphs (a) and (b) of this section, and that are for the acquisition of supplies and services, shall be awarded in conformance with the FAR and HUDAR and, as appropriate, the FIRMR.

[57 FR 59787, Dec. 15, 1992]

2401.601–73 Administrative Service Centers.

Procurement of supplies and services for HUD field components is accomplished at the three Administrative Service Centers, each of which has a Contracting Division. The ASC Contracting Division Director may redelegate contracting authority to qualified personnel within their service area jurisdiction, consistent with the Department's published delegations of procurement authority and 2401.603.

[60 FR 46154, Sept. 5, 1995]

2401.602 Contracting Officers.

2401.602–3 Ratification of unauthorized commitments.

(b)(1) *Policy*. A request for ratification shall be sent to the Contracting Officer through the Head of the Contracting Activity (HCA). The request

will include an explanation as to the need for the service, the reason why normal procurement procedures were not followed, to what extent price competition was received or the price otherwise justified, and, corrective management actions to avoid ratifications in the future. If the justification is adequate, the ratification will be signed by the Contracting Officer and forwarded to the HCA or designee for approval.

(b)(3) The HCA may delegate authority to approve ratifications below the simplified acquisition threshold to:

(i) Contracting division directors (Headquarters); or,

(ii) Contracting branch chiefs (Field).

(c)(5) Legal concurrence may be requested if there is a legal issue involved, e.g. the propriety of the funding source, appropriateness of the expense, etc.

[60 FR 46154, Sept. 5, 1995]

2401.603 Selection, appointment and termination of appointment.

2401.603–2 Selection.

In selecting Contracting Officers, the appointing authorities shall consider experience, education, training, business acumen, judgment, character, reputation and ethics. In the area of experience, education and training, the following shall be required unless contracting authority is limited to simplified small purchase procedures:

(a) Experience, for appointment of an individual to a position having Contracting Officer authority, shall consist of a minimum of two years experience performing contracting, procurement or purchasing operations in a government or commercial procurement office. Alternatively, where appointment of a Contracting Officer involves a specialized procurement field, experience in that field may be considered as a criterion for the appointment.

(b) Educational requirements for an individual in a position having Contracting Officer authority shall be, as a minimum, the equivalent of a Bachelor's Degree from an accredited college or institution preferably with major studies in Business Administration, Law, Accounting or related fields. Experience related to the field of procurement involved (e.g., supply construction, etc.), gained in a government or nongovernment contracting office, may be substituted for educational requirements when it is determined in writing and made a part of the appointment files (as stipulated in 2401.603–3(b)) that a potential appointee is otherwise qualified by virtue of extensive contract-related experience or training.

(c) Training courses as prescribed by the Senior Procurement Executive.

(d) The selection requirements specified in paragraphs (a) through (c) of this section are applicable to all full-time permanent (FTP) personnel whose primary duties are performed as a Contracting Officer as opposed to the individuals who supervise Contracting Officers, or to individuals who normally spend less than 10 percent of their time in the capacity of a Contracting Officer.

[49 FR 7697, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 57 FR 59787, Dec. 15, 1992]

2401.603–3 Appointment.

(a) Appointments below the level of Assistant Secretary shall be made in writing by the Head of the Contracting Activity on a ''Certificate of Appointment,'' SF 1402. Limitations on the scope of the authority to be exercised by the Contracting Officer, other than those contained in applicable laws and regulations shall be entered on the face of the appointment notification.

(b) Appointing officials will execute a written affirmative statement that the individual, placed in the position to commit the Government as Contracting Officer, meets the selection criteria of the Federal Acquisition Regulation and HUDAR. If a temporary waiver (see 2401.603–2) is to be granted concerning the training requirements, the written statement should include the waiver and the statement that the training requirements must be met within 24 months. This statement shall be made part of the official personnel file of the Contracting Officer or the individual so selected or designated. The designation and statement shall be based on the size and complexity of contracts the individual will be required to execute and administer, and also shall consider any

limitations on the scope of the authority to be exercised.

[49 FR 7697, Mar. 1, 1984, as amended at 57 FR 59787, Dec. 15, 1992]

PART 2402—DEFINITIONS OF WORDS AND TERMS

Sec.
2402.000 Scope of part.

Subpart 2402.1—Definitions

2402.101 Definitions.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2402.000 Scope of part.

This part contains definitions of terms used generally throughout the HUDAR, in addition to those set forth in FAR part 2. Additional definitions will be found in individual subparts of the FAR and HUDAR covering terms used in those subparts only.

[49 FR 7699, Mar. 1, 1984]

Subpart 2402.1—Definitions

2402.101 Definitions.

Accounting Office means the Office of Finance and Accounting in headquarters or the Field Accounting Divisions in the field.

Best Value is an approach to source selection that considers the appropriate balance of technical merit, management capability, and cost/price factors in deciding which proposal offers the overall ''best value'' to the Government. A best value procurement permits the government to award a contract to an offeror with a higher price in order to obtain a better technical product or service with a lower risk that performance will be unsuccessful. The selection decision may be based on a determination of whether to tradeoff paying a higher price to obtain the added value of a particular proposal.

Department—means The Department of Housing and Urban Development, which may also be designated as ''HUD''.

Head of Contracting Activity (HCA) is defined in accordance with the FAR. The following HUD officials are designated HCAs:

(1) Director, Office of Procurement and Contracts, for HUD Headquarters procurement;

(2) The Directors, Administrative Service Center Contracting Divisions for field procurement;

(3) The President, Government National Mortgage Association (GNMA), for procurement transactions that are conducted by GNMA in accordance with 2401.601–72(c).

Legal Counsel means the Office of General Counsel in Headquarters, or the cognizant Assistant General Counsel in the field.

Lowest-Priced Technically Acceptable Proposal is an approach to source selection under which all evaluation factors, except price, are evaluated on a ''Pass-Fail'' basis. It is used when price will be the deciding factor once the technical acceptability of proposals has been determined.

Primary Organization Heads are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Deputy Secretary. The Primary Organization Heads of HUD include: the Assistant Secretaries, the Inspector General, and the General Counsel.

Secretary—means the Secretary of the Department of Housing and Urban Development, or his or her designee.

Senior Procurement Executive—means the Assistant Secretary for Administration. The Senior Procurement Executive's responsibilities are stated in HUDAR 2401.601–70.

Source Selection Official means the head of the office initiating and providing funding for the procurement, or his/her designee. This role may also be delegated to the contracting officer.

[50 FR 46575, Nov. 8, 1985, as amended at 52 FR 47396, Dec. 14, 1987; 53 FR 46534, Nov. 17, 1988; 57 FR 59787, Dec. 15, 1992; 58 FR 49437, Sept. 23, 1993; 60 FR 46154, Sept. 1995]

PART 2403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2403.1—Safeguards

Sec.
2403.101 Standards of conduct.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.
2403.204 Treatment of violations.

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303–70 Reporting requirements.

Subpart 2403.4—Contingent Fees

2403.408–1 Responsibilities.
2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.
2403.670 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 49 FR 7700, Mar. 1, 1984, unless otherwise noted.

Subpart 2403.1—Safeguards

2403.101 Standards of conduct.

Detailed rules which apply to the conduct of HUD employees are set forth in 24 CFR part 0.

Subpart 2403.2—Contractor Gratuities to Government Personnel

2403.203 Reporting procedures.

Suspected violations of the gratuities clause (FAR 52.203–3) shall be reported to the Head of the Contracting Activity (HCA) in writing. The HCA will request the Office of Inspector General (OIG) to conduct any necessary investigation. Upon receipt of the OIG report, the HCA will evaluate the circumstances to determine if a violation has occurred. The HCA will refer violations and recommended corrective actions to the Senior Procurement Executive for disposition.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.204 Treatment of violations.

The Senior Procurement Executive will process violations in accordance with FAR 3.204.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.3—Reports of Suspected Antitrust Violations

2403.303–70 Reporting requirements.

Potential anti-competitive practices such as described in FAR subpart 3.3, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive and the Inspector General. The Office of General Counsel will provide reports to the Attorney General as appropriate.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2403.4—Contingent Fees

2403.408–1 Responsibilities.

(b) The contracting officer's documentation of the evaluation, conclusion, and any proposed actions shall be submitted for the review and approval of the Head of the Contracting Activity and the Office of General Counsel.

2403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant against Contingent Fees shall report the matter promptly to the Head of the Contracting Activity.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the Head of the Contracting Activity shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

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

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

(3) Initiate suspension or debarment action.

(4) Refer suspected fraudulent or criminal matters to the Office of Inspector General for possible referral to the Department of Justice.

Subpart 2403.5—Other Improper Business Practices

2403.502 Subcontractor kickbacks.

(b) Contracting Officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity to the Office of Inspector General consistent with the procedures for reporting any violation of law contained in HUD Handbook 2000.3, REV. 2, Office of Inspector General Activities (1983).

Subpart 2403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

2403.601 Policy.

The Senior Procurement Executive must approve exceptions to the restriction against contracts with Government employees under FAR subpart 3.6. In addition, the Contracting Officer shall comply with FAR subpart 9.5 before awarding any such contract.

[49 FR 7700, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

2403.670 Solicitation provision and contract clause.[1]

Insert the clause at 2452.203–70 in all solicitations and contracts, and the provision at 2452.203–71 in all solicitations.

[57 FR 59788, Dec. 15, 1992]

[1] This HUDAR provision/clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Government-wide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

PART 2404—ADMINISTRATIVE MATTERS

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2404.8—Government Contract Files

2404.805 Storage, handling and disposal of contract files.

(a) Unsuccessful cost and technical proposals shall be retained in the contracting activity for a period of two months following the contract award as reference material for debriefings. Upon expiration of the two month period, the contracting office shall either:

(1) Retain one copy of each such proposal with the official contract file; or,

(2) Ship one copy of each unsuccessful bid or proposal to the Federal Records Center unless a debriefing has been requested but not held, or a protest is pending concerning the procurement. In no event shall these documents be destroyed before expiration of the retention periods in FAR 4.805.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two months following the contract award. Upon expiration of the two month period, the program office shall return one copy of each unsuccessful bid or proposal not required for the conduct of debriefings to the contracting activity for proper disposition. The remaining copies will be destroyed.

[49 FR 7700, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984. Redesignated and amended at 60 FR 46155, Sept. 5, 1995]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2405—PUBLICIZING CONTRACT ACTIONS

Subpart 2405.2—Synopses of Proposed Contract Actions

Sec.
2405.202 Exceptions.

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d); and FAR class deviation approved November 15, 1990.

Subpart 2405.2—Synopses of Proposed Contract Actions

2405.202 Exceptions.

(b) The Senior Procurement Executive shall make the written determination in accordance with FAR 5.202(b) that advance notice of proposed contract actions is not appropriate or reasonable.

[50 FR 46576, Nov. 8, 1985]

Subpart 2405.5—Paid Advertisements

2405.502 Authority.

Use of paid advertisements in newspapers, trade journals, and other media are authorized by Delegations or Redelegations of Authority, subject to the availability of funds.

[49 FR 7701, Mar. 1, 1984]

PART 2406—COMPETITION REQUIREMENTS

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

Sec.
2406.202 Establishing or maintaining alternative sources.

Subpart 2406.3—Other Than Full and Open Competition

2406.304 Approval of the justification.
2406.304–70 Approval of the justification—field procurements.

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 50 FR 46576, Nov. 8, 1985, unless otherwise noted.

Subpart 2406.2—Full and Open Competition After Exclusion of Sources

2406.202 Establishing or maintaining alternative sources.

(b)(1) The HCA shall sign the Determination and Finding (D&F) required by FAR 6.202(b)(1).

Subpart 2406.3—Other Than Full and Open Competition

2406.304 Approval of the justification.

(c) A class justification for other than full and open competition shall be approved in writing by the Senior Procurement Executive.

2406.304–70 Approval of the justification—field procurements.

(a) The justification for other than full and open competition for field procurements shall be approved in writing—

(3) For a proposed contract more than $1 million but not exceeding $10 million, by the Director, Office of Procurement and Contracts.

[60 FR 46155, Sept. 5, 1995]

Subpart 2406.5—Competition Advocates

2406.501 Requirement.

The Senior Procurement Executive shall designate the Department's competition advocate by FEDERAL REGISTER notice. Contracting activity-level competition advocates shall be appointed by each HCA.

[60 FR 46155, Sept. 5, 1995]

PART 2407—ACQUISITION PLANNING

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 2407.1—Acquisition Plans

2407.102 Policy.

The Senior Procurement Executive is responsible for establishing and maintaining internal procedures to implement the Department's Advance Procurement Planning System (APPS). The APPS should generally meet the criteria contained in FAR subpart 7.1.

[49 FR 7701, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

PART 2409—CONTRACTOR QUALIFICATIONS

Subpart 2409.5—Organizational Conflicts of Interest

Sec.
2409.500 Scope of subpart.
2409.502 Applicability.
2409.503 Waiver.
2409.504 Contracting Officer responsibilities.
2409.507 Solicitation provisions and contract clause.
2409.507–1 Solicitation provisions.
2409.507–2 Contract clause.

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7701, Mar. 1, 1984, unless otherwise noted.

Subpart 2409.5—Organizational Conflicts of Interest

2409.500 Scope of subpart.

This subpart prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest.

2409.502 Applicability.

The procedures described in this section shall be used for all advisory and assistance services contracts and for any other procurement involving the acquisition of services when the Contracting Officer determines that the nature of the procurement presents a potential for an organizational conflict of interest.

[49 FR 7701, Mar. 1, 1984, as amended at 57 FR 59788, Dec. 15, 1992]

2409.503 Waiver.

The Senior Procurement Executive is authorized to waive any general rule or procedure in FAR Subpart 9.5 by determining that its application to a particular situation would not be in the Government's interest.

[57 FR 59788, Dec. 15, 1992]

2409.504 Contracting officer responsibilities.

The following actions are required for all contract actions covered by 2409.502:

(a) *Disclosure or Representation*. (1) Each solicitation shall contain a provision which requires a potential offeror to provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under this section and bearing on whether the offeror and any proposed subcontractor or consultant has a possible organizational conflict of interest with respect to:

(i) Being able to render impartial, technically sound, and objective assistance or advice; or

(ii) Being given an unfair competitive advantage.

The offeror also may provide relevant facts that show how its organizational structure or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organizations and how that structure or system would eliminate or neutralize such organizational conflict.

(2) In the absence of any interest referred to above, the offeror shall submit a statement certifying that to the best of its knowledge and belief no such interest exists.

(3) The Contracting Officer will review the statement submitted and may

require additional relevant information from the offeror. All such information and any other relevant information known to the Contracting Officer will be used to determine whether an award to the offeror may create any organizational conflict of interest. If such organizational conflict of interest is found to exist, the Contracting Officer may:

(i) Impose appropriate conditions which eliminate or neutralize such conflict;

(ii) Disqualify the offeror; or,

(iii) Determine that it is otherwise in the best interests of the United States to contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(4) Failure to provide the disclosure or execute the representation will be deemed to be a minor infraction and the offeror or contractor will be permitted to correct the omission within a time frame established by the Contracting Officer.

(5) Refusal to provide the disclosure or representation and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant interest shall disqualify the offeror or contractor for award or provide the rationale for post-award default action if the exercise of due diligence would have disclosed an apparent conflict. This provision applies equally to post-award disclosure requirements contained in the clause required by HUDAR 2409.508–2.

(b) *Administrative requirements.* (1) The disclosure or certification required by HUDAR 2409.508–1 and 2409.508–2 is designed to alert the Contracting Officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. However, this disclosure or representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect his or her participation in subsequent procurements arising out of or related to work performed under a contract that results from the solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to eliminate or neutralize such conflict will be included in any resultant contract. Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent procurements. A fixed term of reasonable duration is measured by the time required to eliminate what otherwise would constitute an unfair competitive advantage. This is a variable. However, in no event shall an exclusion be stated which is not related to a specific expiration date or a certain event. The Government shall not determine without notice on an after-the-fact basis that performance of a contract created an organizational conflict of interest with respect to procurements arising out of or related to work performed under that contract.

(2) Whenever an organizational conflict of interest is found to exist, it shall be adequately eliminated, or neutralized through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include, but are not limited, to the following:

(i) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the Contractor.

(ii) Software exclusion clauses which:

(A) Require the contractor, members of his or her Board of Directors, or his or her chief executives to eliminate, or neutralize an organizational conflict of interest:

(B) Provide for the protection of the confidentiality of data and guard against its unauthorized use; or

(C) Prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or being in a position to influence such work.

(iii) The prospective contractor shall be given the opportunity to negotiate the terms and conditions of the clause and its application. The extent and time period of any restrictions shall be specified in the clause.

(c) *Contract award when an organizational conflict of interest is present.* (1) No contract or modification award shall be made to an offeror or contractor having an organizational conflict of interest with respect to that contract or modifications unless:

(i) The conflict has been eliminated or neutralized; or

(ii) The Contracting Officer determines that the award of the contract would be otherwise in the best interests of the Government. Where such a determination is made, an appropriate written finding and determination shall be placed in the contract file.

(2) Examples of circumstances justifying such a determination include but are not necessarily limited to:

(i) Situations where the public exigency will not otherwise permit; or,

(ii) Situations where the requirement cannot otherwise be obtained.

(3) The Contracting Officer's determination shall be approved by the Head of the Contracting Activity before award.

(d) Action in Lieu of Termination. If the Contracting Officer determines that it would not be in the best interest of the Government to terminate a contract as provided in the clause cited at HUDAR 2409.508–2, the Contracting Officer shall take every reasonable action to eliminate, or otherwise neutralize the organizational conflict of interest.

[49 FR 7701, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 53 FR 46534, Nov. 17, 1988; 57 FR 59788, Dec. 15, 1992]

2409.507 Solicitation provisions and contract clause.

2409.507–1 Solicitation provisions.

The Contracting Officer shall insert the provisions at 2452.209–70, Organizational Conflicts of Interest Notification, and 2452.209–71, Organizational Conflicts of Interest Certification, in all solicitations over the small purchase limitation.

[53 FR 46534, Nov. 17, 1988. Redesignated at 61 FR 19470, May 1, 1996]

2409.507–2 Contract clause.

The Contracting Officer shall insert the clause at 2452.209–72, Organizational Conflicts of Interest, in all contracts.

[53 FR 46534, Nov. 17, 1988. Redesignated at 61 FR 19470, May 1, 1996]

Subpart 2409.70—Debarment, Suspension, and Ineligibility

2409.701 HUD regulations on debarment, suspension, and ineligibility.

Departmental policies and procedures concerning debarment and suspension are contained in 24 CFR part 24.

PART 2411—DESCRIBING AGENCY NEEDS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2411.4—Delivery or Performance Schedules

2411.404 Contract clause.

(a) The Contracting Officer may insert the clause at 48 CFR 2452.211–70, Contract Period, in all solicitations and contracts.

[61 FR 19470, May 1, 1996]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACTING TYPES

PART 2413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 2413.1—General

Sec.
2413.106–2 Data to support purchases.

Subpart 2413.4—Imprest Fund

2413.402 Agency responsibilities.
2413.403 Conditions for use.

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.
2413.505–1 Optional Form (OF) 347, order for supplies and services, and Optional Form 348, order for supplies and services schedule–continuation.

Subpart 2413.6—Micro–Purchase

2413.601 General.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2413.1—General

2413.106–2 Data to support purchases.

(d) Contracting officers may use Form HUD–24007, Purchase/Delivery Order Data File, to record all relevant data pertaining to a purchase using simplified acquisition procedures, including recording written and oral quotations received and documenting orders against GSA contracts.

[61 FR 19470, May 1, 1996]

Subpart 2413.4—Imprest Fund

2413.402 Agency responsibilities.

(c) Policies and procedures governing the operation of imprest funds are established in internal directives issued by HUD's Office of the Chief Financial Officer.

[60 FR 46155, Sept. 5, 1995]

2413.403 Conditions for use.

(a) Transaction limits above that established in FAR 13.403(a) may be approved by the Senior Procurement Executive.

[60 FR 46155, Sept. 5, 1995]

Subpart 2413.5—Purchase Orders

2413.505 Purchase order and related forms.

2413.505–1 Optional Form (OF) 347, order for supplies and services, and Optional Form 348, order for supplies and services schedule-continuation.

(b) For purchases charged to the FHA Fund using simplified acquisition procedures, contracting officers may use Form HUD–2542, Purchase Order and Payment Authorization.

[61 FR 19470, May 1, 1996]

Subpart 2413.6—Micro-Purchase

SOURCE: 60 FR 46155, Sept. 5, 1995, unless otherwise noted.

2413.601 General.

(c) HUD's procedures concerning the use of the government-wide commercial purchase card are contained in its Handbook on the Government-wide Commercial Credit Card Program.

PART 2414—SEALED BIDDING

Subpart 2414.4—Opening of bids and Award of Contract

Sec.
2414.404 Rejection of bids.
2414.404–1 Cancellation of invitations after opening.
2414.407 Mistakes in bid.
2414.407–3 Other mistakes disclosed before award.
2414.407–4 Mistakes after award.
2414.408 Award.
2414.408–70 Award when only one bid is received.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7702, Mar. 1, 1984, unless otherwise noted.

Subpart 2414.4—Opening of Bids and Award of Contracts

2414.404 Rejection of bids.

2414.404–1 Cancellation of invitations after opening.

(c) Invitations may be cancelled and all bids rejected before award but after opening when the Head of the Contracting Activity, as described in subpart 2402.1, determines in writing that cancellation is appropriate and consistent with FAR 14.404–1.

[50 FR 46577, Nov. 8, 1985]

2414.407 Mistakes in bids.

2414.407–3 Other mistakes disclosed before award.

(e) The determination to allow a bidder to: Correct a mistake in bid discovered before award (other than obvious clerical errors); withdraw a bid; or, neither correct nor withdraw a bid shall be submitted to the Head of the Contracting Activity for approval.

[57 FR 59788, Dec. 15, 1992. Redesignated at 61 FR 19470, May 1, 1996]

2414.407–4 Mistakes after award.

(d) For determinations under FAR 14.407–4(b) (1) and (2), the Head of the Contracting Activity will obtain the concurrence of legal counsel before notification to the Contractor. The Contracting Officer shall be notified promptly of action to be taken.

[61 FR 19470, May 1, 1996]

2414.408 Award.

2414.408–70 Award when only one bid is received.

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

[49 FR 7702, Mar. 1, 1984; 51 FR 7948, Mar. 7, 1986, as amended at 58 FR 49437, Sept. 23, 1993. Redesignated at 61 FR 19471, May 1, 1996]

PART 2415—CONTRACTING BY NEGOTIATION

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2415.407 Solicitation provisions.
2415.413 Disclosure and use of information before award.
2415.413–1 Alternate I.
2415.413–2 Alternate II.

Subpart 2415.5—Unsolicited Proposals

2415.505 Content of unsolicited proposals.
2415.505–70 Unsolicited research proposals.
2415.506 Agency procedures.

Subpart 2415.6—Source Selection

2415.604 Responsibilities.
2415.605 Evaluation factors.
2415.608 Proposal evaluation.
2415.610 Written or oral discussion.
2415.611 Best and final offers.
2415.613 Alternative source selection procedures.
2415.613–70 Technical evaluation.
2415.613–71 Limited written or oral discussions.
2415.613–72 Selection and final negotiation.

Subpart 2415.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2415.1005 Protests against award.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7703, Mar. 1, 1984, unless otherwise noted.

Subpart 2415.4—Solicitation and Receipt of Proposals and Quotations

2415.407 Solicitation provisions.

(a) The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.215–70, Proposal Content, in all solicitations for negotiated procurements using the best value approach selection method

expected to exceed the simplified acquisition limit. The Contracting officer shall adapt paragraph (c) of the provision (i.e., include, delete, and provide additional detail to subparagraphs) to address the particular requirements of the immediate solicitation. The provision may be used in simplified acquisitions when it is necessary to obtain technical and management information in making the award selection. When award selection will be made through the lowest-priced technically acceptable proposal method, the provision shall be used with its Alternate I. If the proposed contract requires work on, or access to, sensitive automated systems as required by the clause at 48 CFR 2452.237–76, the provision shall be used with its Alternate II.

[61 FR 19471, May 1, 1996]

2415.413 Disclosure and use of information before award.

2415.413–1 Alternate I.

It is HUD's policy to have proposals evaluated by the most competent technical and management sources available. The Department's preferred procedure for evaluation of proposals is not to disclose the proposals outside the Government for evaluation purposes. If external parties will not be used to evaluate proposals, the procedures in FAR 15.413–1 Alternate I, shall be used.

[61 FR 19471, May 1, 1996]

2415.413–2 Alternate II.

When it is necessary to disclose proposals outside the Government to meet the Department's evaluation needs, the procedures in FAR 15.413–2 Alternate II, shall be used.

(f)(1) The HCA is authorized to make decisions regarding the release of proposals outside the Government.

(2) The written agreement shall be obtained prior to releasing proposals to the evaluator.

(3) The HCA shall make the written determination, which shall be retained permanently in the official contract file.

[61 FR 19471, May 1, 1996]

Subpart 2415.5—Unsolicited Proposals

2415.505 Content of unsolicited proposals.

2415.505–70 Unsolicited research proposals.

FAR subpart 15.5 outlines the policies and procedures relating to unsolicited proposals. In addition to these requirements, the Department requires that each award made as the result of an unsolicited proposal for research contain a commitment to provide actual cost-sharing. This provision will be included in the award whether or not cost-sharing was part of the unsolicited proposal.

2415.506 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.

(b) Unless otherwise specified in a FEDERAL REGISTER announcement unsolicited proposals should be submitted to the following contact points:

(1) *For research*— Department of Housing and Urban Development, Assistant Secretary for Policy Development and Research, Office of Management and Program Control, 451 7th Street SW., Washington, DC 20410.

(2) *For funding under the Secretary's Discretionary Fund Program*—Department of Housing and Urban Development, Assistant Secretary for Community Planning and Development, Office of Program Policy Development, 451 Seventh Street, SW., Washington, DC 20410.

(3) *For all others*— Department of Housing and Urban Development, Director, Office of Procurement and Contracts, 451 7th Street SW., Washington, DC 20410.

[49 FR 7703, Mar. 1, 1984, as amended at 51 FR 7948, Mar. 7, 1986]

Subpart 2415.6—Source Selection

SOURCE: 50 FR 46577, Nov. 8, 1985, unless otherwise noted.

2415.604 Responsibilities.

(b) The technical requirements related to source selection shall be performed by a Technical Evaluation Panel (TEP). Generally, a TEP will consist of three to five voting members, with one member serving as the chairperson. For more complex procurements, the TEP may add advisors and/or a committee structure to focus on specific technical issues or concerns. For inexpensive or routine acquisitions of equipment, supplies or services, the TEP may consist of one technical representative. The TEP is responsible for documenting the evaluation of all proposals as appropriate to the source selection approach in use, and for making the source selection recommendation(s).

(c)(4) The selection of the source(s) for contract award shall be made by:

(i) The contracting officer for awards using the ''lowest-priced technically-acceptable proposal'' approach; or,

(ii) The Source Selection Official (SSO) for awards based on the ''best value'' approach.

[60 FR 46156, Sept. 5, 1995]

2415.605 Evaluation factors.

(d)(1) The solicitation shall state the basis for the source selection decision as either ''lowest-priced technically-acceptable proposal'' (LPTAP) or ''best value'' (see 2402.1, Definitions).

(2) When using the best value approach, each technical evaluation factor and subfactor shall be assigned a numerical weight (except for pass-fail factors) which shall appear in the RFP. When using LPTAP, each evaluation factor is applied on a ''pass-fail'' basis; numerical scores are not assigned. ''Pass-Fail'' evaluation factors define a standard of comparison for solicitation/contract requirements which proposals either completely satisfy or fail to meet.

[60 FR 46156, Sept. 5, 1989, as amended at 61 FR 19471, May 1, 1996]

2415.608 Proposal evaluation.

(a) After receipt of proposals, the Contracting Officer will forward copies of the technical portion of each proposal to the TEP Chairperson or his or her designee. The cost/price portion of each proposal shall be retained by the Contracting Officer pending initial technical evaluation by the TEP.

(3) *Technical evaluation.* The TEP shall rate each proposal based on the evaluation factors specified in the solicitation. The TEP shall identify each proposal as being either acceptable, unacceptable but capable of being made acceptable, or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Under the best value approach, predetermined cut-off scores designed to determine a threshold level of acceptability of proposals shall not be employed. A technical evaluation report, which complies with FAR 15.608(a)(3), shall be prepared and signed by the technical evaluator(s), furnished to the contracting officer, and maintained as a permanent record in the official procurement file.

(b) The HCA may reject all proposals received in response to a solicitation. His or her written determination shall follow FAR 15.608(b).

[50 FR 46577, Nov. 8, 1985, as amended at 57 FR 59789, Dec. 15, 1992; 60 FR 46156, Sept. 5, 1995; 61 FR 19471, May 1, 1996]

2415.610 Written or oral discussion.

(b) Except as provided in FAR 15.610(a), the Contracting Officer (or his or her designee) and the TEP shall conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range.

2415.611 Best and final offers.

(d) After receipt and evaluation of best and final offers, the TEP shall document its selection recommendation(s) in a final written report. The final report shall include sufficient information to support the recommendation(s) made, appropriate to the source selection approach and type and complexity of the acquisition.

[60 FR 46156, Sept. 5, 1995]

2415.613 Alternative source selection procedures.

(a) The Department of Housing and Urban Development uses procedures authorized by FAR 15.613 for all research and development contracts and

other contracts where the contractor's proposed methodology of carrying out the work is a significant selection factor and the award decision will follow the best value approach.

(b) These procedures allow for limited oral or written discussions to avoid technical leveling, a request for best and final offers, and selection of source(s) for negotiation of a final contract.

[57 FR 59789, Dec. 15, 1992, as amended at 60 FR 46156, Sept. 5, 1995]

2415.613–70 Technical evaluation.

The TEP shall perform the required technical evaluation of proposals received in accordance with 2415.608.

[60 FR 46156, Sept. 5, 1995]

2415.613–71 Limited written or oral discussions.

Limited written or oral discussions shall be conducted with each offeror considered to be within the competitive range. These discussions should address technical weaknesses of the particular offer, as well as cost issues, to the fullest extent practicable while avoiding technical leveling.

[57 FR 59789, Dec. 15, 1992]

2415.613–72 Selection and final negotiation.

(a) *Selection*. After the close of discussions and receipt of best and final offers, the TEP shall perform a final evaluation and prepare its selection recommendation for the SSO. Based on this evaluation, the SSO shall select for final contract negotiation the offeror(s) whose proposal is most advantageous to the Government in terms of price/cost, technical and other relevant factors included in the solicitation.

(b) *Final negotiation*. This includes reaching agreement with the selected source on any remaining cost/price, technical, socioeconomic, or other issues that will condition performance of the contract and setting forth those terms and conditions in a mutually acceptable contract document. No factor or condition that could have had any effect on the selection process may be changed at this point. These negotiations are led by the contracting officer and may include any technical, audit, or support personnel he/she deems necessary.

[57 FR 59789, Dec. 15, 1992, as amended at 60 FR 46156, Sept. 5, 1995]

Subpart 2415.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

2415.1005 Protests against award.

Protests against awards of negotiated procurements shall be processed in accordance with FAR subpart 33.1 and HUDAR subpart 2433.1

[50 FR 46578, Nov. 8, 1985. Redesignated at 61 FR 19471, May 1, 1996]

PART 2416—TYPES OF CONTRACTS

Subpart 2416.4—Incentive Contracts

Sec.
2416.405 Contract clauses.
2416.506 Solicitation provisions and contract clauses.
2416.506–70 Unpriced delivery/task orders.

Subpart 2416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.
2416.603–2 Application.

AUTHORITY: 40 U.S.C. 486(c); 41 U.S.C. 253; 42 U.S.C. 3535(d).

SOURCE: 49 FR 7706, Mar. 1, 1984, unless otherwise noted.

Subpart 2416.4—Incentive Contracts

2416.405 Contract clauses.

(e)(1) The Contracting Officer shall insert the clauses at 2452.216–70, Estimated Cost, Base Fee, and Award Fee; 2452.216–71, Payment of Base and Award Fee; 2452.216–72, Determination of Award Fee Earned; 2452.216–73, Performance Evaluation Plan; and 2452.216–74, Distribution of Award Fee, in all award fee contracts. The Contracting Officer may modify the clauses to meet individual situations and any clause or specific requirement therein may be deleted when it is not applicable to a given contract.

[53 FR 46535, Nov. 17, 1988]

2416.506 Solicitation provisions and contract clauses.

2416.506–70 Unpriced delivery/task orders.

(e) The contracting officer shall insert the clause at 2452.216–75, Unpriced Task Orders, in contracts for which task orders are individually negotiated and there may be a need to issue unpriced task orders; provided, however, that the contracting officer shall ensure that the cost of the work authorized by the task order is not in excess of the funds obligated under the contract.

[57 FR 59790, Dec. 15, 1992. Redesignated at 61 FR 19471, May 1, 1996]

Subpart 2416.6—Time-And-Materials, Labor-Hour, and Letter Contracts

2416.603 Letter contracts.

2416.603–2 Application.

(c) In accordance with FAR 16.603–2(c), a letter contract shall be made definite within 180 days of the date of award or after completion of 40 percent of the work to be performed, whichever occurs first, unless different terms are approved in advance by the Head of the Contracting Activity.

PART 2417—SPECIAL CONTRACTING METHODS

Subpart 2417.2—Options

2417.204 Contracts.

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

AUTHORITY: 31 U.S.C. 1535; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2417.2—Options

2417.204 Contracts.

(e) The Senior Procurement Executive shall approve any solicitation or contract which exceeds the five (5) year maximum for acquisitions of supplies or services.

[61 FR 19471, May 1, 1996]

Subpart 2417.5—Interagency Acquisitions Under the Economy Act

2417.504 Ordering procedures.

(b) The Contracting Officer shall use HUD Form 730, Award/Modification of Interagency Agreement, when placing or modifying an order for supplies or services from another Government agency.

[53 FR 46535, Nov. 17, 1988]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2419—SMALL BUSINESS PROGRAMS

Subpart 2419.2—Policies

Sec.
2419.201 General policy.

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

Subpart 2419.7—Subcontracting with Small Business, Small Disadvantaged Business and Women–Owned Small Business Concerns

2419.708 Solicitation provisions and contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2419.2—Policies

2419.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Headquarters, is responsible for the administration of HUD's small business programs. This includes Department-wide responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing HUD before other government agencies on matters primarily affecting small, small disadvantaged and women-owned small businesses.

(d) Each head of a contracting activity shall designate a small business specialist who shall perform the following functions:

(1) Maintain a program designed to locate capable small business sources as referenced in 48 CFR 2419.201(c) for current and future procurements;

(2) Coordinate inquiries and requests for advice from such businesses on procurement matters;

(3) Review proposed requirements for supplies and services, ensure that all such business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendation for small business or Section 8a set-asides (under the Small Business Act);

(4) Take action to ensure the availability of adequate specifications and drawings, when necessary, to obtain participation by such businesses in a procurement;

(5) Review proposed procurements for possible breakout of items suitable for procurement from such businesses;

(6) Advise such businesses with respect to the financial assistance available under existing laws and regulations and assist such businesses in applying for financial assistance;

(7) Ensure that adequate records are maintained and accurate reports are prepared concerning such businesses participation in the procurement program;

(8) Make available to SBA copies of solicitations, when requested, and

(9) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification, and any other matter in which the small business program may be involved.

[49 FR 7706, Mar. 1, 1984, as amended at 50 FR 46578, Nov. 8, 1985; 61 FR 19471, May 1, 1996]

Subpart 2419.5—Set-Asides for Small Business

2419.503 Setting aside a class of acquisitions.

(a) *Class set-aside for construction under the Acquired Property Program.* A class set-aside is hereby made for each proposed procurement for construction under the Acquired Property Program with an estimated cost of less than $1,000,000. Accordingly, Contracting Officers shall set aside for small business each such proposed procurement. If a Contracting Officer determines that any individual procurement falling within the class set-aside requirements of this section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn with the concurrence of the Head of the Contracting Activity. Proposed procurements

for construction which exceed an estimate of $1,000,000 shall be considered for set-aside on a case-by-case basis.

[49 FR 7706, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 53 FR 46535, Nov. 17, 1988]

Subpart 2419.7—Subcontracting with Small Business, Small Disadvantaged Business and Women–Owned Small Business Concerns

2419.708 Solicitation Provisions and Contract Clauses.[3]

(d) The Contracting Officer shall insert the provision at 2452.219–70 in negotiated solicitations exceeding $500,000 that are not set aside for small business or 8(a) concerns.

(e) The Contracting Officer shall insert the provision at 2452.219–70 with Alternate I in sealed bid solicitations exceeding $500,000 that are not set aside for small business or 8(a) concerns.

[57 FR 59790, Dec. 15, 1992]

PART2420—[RESERVED]

PART 2422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46535, Nov. 17, 1988, unless otherwise noted.

Subpart 2422.14—Employment of the Handicapped

2422.1408 Contract clause.

(c) The Contracting Officer shall insert the clause at 2452.222–70, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

[3] The coverage provided in paragraphs (d) and (e) have been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

PART 2424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2424.1—Protection of Individual Privacy Procedures

Sec.
2424.103 Procedures.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.
2424.202–70 Solicitation provision.

AUTHORITY: Freedom of Information Act (5 U.S.C. 552); Privacy Act of 1974 (5 U.S.C. 552a); sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2424.1—Protection of Individual Privacy

2424.103 Procedures.

(b)(2) See 24 CFR part 16 for the HUD regulations which implement the Privacy Act.

Subpart 2424.2—Freedom of Information Act

2424.202 Policy.

See 24 CFR part 15 for the HUD regulations which implement the Freedom of Information Act.

2424.202–70 Solicitation provision.

The Contracting Officer shall insert the provisions at 2452.224–70, Freedom of Information Act Notification, in all negotiated solicitations exceeding the small purchase limitation.

[53 FR 46536, Nov. 17, 1988]

PART 2425—TRADE AGREEMENTS ACT

AUTHORITY: 42 U.S.C. 3535(d).

2425.402 Policy.

It is the Department's policy to determine whether the Trade Agreements

Act applies based on the total estimated dollar value of the proposed acquisition before the solicitation is issued, including all line items and options.

[57 FR 59790, Dec. 15, 1992]

PART 2426—OTHER SOCIOECONOMIC PROGRAMS

Subpart 2426.70—Minority Business Enterprises

2426.701 Policy.
2426.702 Responsibility.
2426.703 Solicitation provision.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2426.70—Minority Business Enterprises

2426.701 Policy.

It is the policy of the Department to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission. A ''minority business enterprise'' is a business which is at least 51 percent owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members are those groups of U.S. citizens found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act.

[60 FR 46156, Sept. 5, 1995]

2426.702 Responsibility.

The Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) develops Departmental MBE plans and policies in accordance with Executive Orders 11625 and 12432 and by directive from the Secretary. He or she provides advice and guidance to the Secretary and Primary Organization Heads on MBE functions, reviews and makes recommendations to the Secretary on MBE annual plans and goals, monitors and evaluates the Department's MBE program, and reports on MBE program performance to the Department of Commerce.

[60 FR 46157, Sept. 5, 1995]

2426.703 Solicitation provision.

Contracting officers shall request all interested contractors, bidders, or offerors (including those responding to requests for quotations) to complete the certification at 2452.226–70, Certification of Status as a Minority Business Enterprise. Completion of this certification is voluntary and is not a condition of eligibility for contract award.

[60 FR 46157, Sept. 5, 1995]

PART 2427—PATENTS, DATA, AND COPYRIGHTS

Subpart 2427.3—Patent Rights Under Government Contracts

Sec.
2427.305 Administration of patent rights clauses.
2427.305–2 Follow-up by contractor.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2427.3—Patent Rights Under Government Contracts

2427.305 Administration of patent rights clauses.

2427.305–2 Follow-up by contractor.

(b) Contractor reports. Contractors shall complete and submit to the Contracting Officer HUD Form 770, Report of Inventions and Subcontracts, upon receipt of said form. The Contracting Officer shall send the form to those contractors whose contract work may have required the development of inventions upon physical completion of the contract.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2428—BONDS AND INSURANCE

Subpart 2428.1—Bonds

Sec.
2428.106 Administrative.
2428.106–6 Furnishing information.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

EDITORIAL NOTE: At 60 FR 46157, Sept. 5, 1995, subpart 2428.2 was removed effective Oct. 5, 1995. The superseded text of the removals remaining in effective until Oct. 5, 1995, appears in the October 1, 1994 revision of title 48 chapters 15–28.

Subpart 2428.1—Bonds

2428.106 Administrative.

2428.106–6 Furnishing information.

(c) The HCA shall furnish the certified copy of the bond and the contract for which it was given to any person who requests them in accordance with FAR 28.106–6.

PART 2429—TAXES

AUTHORITY: 42 U.S.C. 3535(d).

Subpart 2429.1—General

2429.101 Resolving tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of contracting and ensure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within HUD for handling all those tax problems. Therefore, the contracting activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request, in writing, the assistance of legal counsel. The request shall detail the problem and be accompanied by appropriate backup data. Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. Counsel is responsible for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

[60 FR 46157, Sept. 5, 1995]

PART 2432—CONTRACT FINANCING

Subpart 2432.4—Advance Payments

Sec.
2432.402 General.

Subpart 2432.9—Prompt Payment

2432.906 Contract financing payments.
2432.908 Contract clauses.

AUTHORITY: 31 U.S.C. 3901–3906; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46536, Nov. 17, 1988, unless otherwise noted.

Subpart 2432.4—Advance Payments

2432.402 General.

(e)(1) The Determination and Findings required by FAR 32.402(c)(1)(iii) shall be made by the Director, Office of Procurement and Contracts for Headquarters contracts, or the cognizant Director, Administrative Services Center Contracting Division for field contracts.

(2) Each advance payment situation shall be coordinated with the head of the cognizant accounting office, before authorization may be given, to ensure that there are controls in place to assure proper administration of advance payments.

[60 FR 46157, Sept. 5, 1995]

Subpart 2432.9—Prompt Payment

2432.906 Contract financing payments.

Except for construction contracts (see FAR 52.232–27), periods for payment shorter than 30 days shall not be

specified in contracts without the prior approval of the cognizant accounting office to ensure that procedures are in place to allow timely payment.

[60 FR 46157, Sept. 5, 1995]

2432.908 Contract clauses.

(a) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–70, Payment Schedule and Invoice Submission (Fixed-Price), in all fixed-price solicitations and contracts. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

(b) The Contracting Officer shall insert a clause substantially the same as provided at 2452.232–71, Voucher Submission (Cost-Reimbursement), in all cost-reimbursement solicitations and contracts when vouchers are to be sent directly to the paying office. The clause with its Alternate I may be used for solicitations and contracts issued by the Administrative Service Centers.

[60 FR 46157, Sept. 5, 1995]

PART 2433—PROTESTS, DISPUTES, AND APPEALS

Sec.

2433.000 Scope of part.

Subpart 2433.1—Protests

2433.101–70 Definitions.
2433.102 General.
2433.102–70 Responsibility.
2433.103 Protests to the agency.
2433.103–70 Agency decision.
2433.104 Protests to GAO.
2433.105 Protests to GSBCA.

AUTHORITY: 31 U.S.C. 3551–3556; 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 50 FR 46578, Nov. 8, 1985, unless otherwise noted.

2433.000 Scope of part.

This part identifies the responsible agents and sets forth procedural requirements for handling protests.

[51 FR 40333, Nov. 6, 1986]

Subpart 2433.1—Protests

2433.101–70 Definitions.

Working day, as used in this part, means a working day of the Agencies of the Federal Government, excluding Saturdays, Sundays, and Federal holidays, as specified in 5 U.S.C. 6103.

2433.102 General.

2433.102–70 Responsibility.

The Office of General Counsel has responsibility for handling matters relating to protests filed with the General Accounting Office (GAO) or the General Services Board of Contract Appeals (GSBCA) against award of contracts by the Department. All written communications from the Department to the GAO or the GSBCA shall be by the Office of General Counsel. The Contracting Officer has responsibility for furnishing the Office of General Counsel with all information relating to a protest.

2433.103 Protests to the agency.

(a)(2) When the Contracting Officer makes a determination to award a contract notwithstanding a protest, as authorized by FAR 33.103(a)(2), that determination shall be approved by the HCA before award, after consultation with the Office of General Counsel.

(a)(4) Protests received after award that are filed only with the Department shall be decided promptly by the Contracting Officer after consultation with appropriate officials, including the program office and the Office of General Counsel.

[57 FR 59790, Dec. 15, 1992]

2433.103–70 Agency decision.

The Contracting Officer shall issue, in writing, his or her final decision on a protest within 20 working days from the date of receipt of the protest by the Department. If it is determined that it is desirable to solicit the views of GAO, the time for rendering a decision shall be 10 working days after the Department's receipt of GAO's views, but not

later than 30 working days after the Department receives the protest.

[50 FR 46578, Nov.8, 1985. Redesignated at 57 FR 59790, Dec. 15, 1992]

2433.104 Protests to GAO.

(a)(1) *General.* When advised by GAO of the receipt of a protest, the Office of General Counsel shall immediately inform the contracting activity. The Contracting Officer shall notify the Office of General Counsel upon receipt of the copy of the protest from the protestor.

(2) Upon receipt by the Department of a written request for a formal report relating to a protest, the Office of General Counsel, with appropriate assistance from the Contracting Officer, shall prepare and file the report in accordance with GAO requirements at 4 CFR part 21.

(c) *Protests after award.* Protests received after award shall be treated in the same manner as those filed with GAO before award in accordance with paragraphs (a)(1) and (a)(2) of this section.

(d) *Findings and notice.* When the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by FAR 33.104(b)(1)(i–ii), or to continue contractor performance as authorized by FAR 33.104(c)(2), that determination of the intent to make an award or to continue contract performance shall be approved by the HCA after consultation with the Office of General Counsel.

(g) *Notice to GAO.* If the HCA proposes not to comply with a GAO recommendation concerning the resolution of a protest of a procurement award, prior to reporting to the Comptroller General concerning that decision, the HCA shall obtain the concurrence of the Office of General Counsel and the Senior Procurement Executive.

[50 FR 46578, Nov. 8, 1985, as amended at 51 FR 40333, Nov. 6, 1986; 57 FR 59790, Dec. 15, 1992]

2433.105 Protests to GSBCA.

(d)(2) The Determination and Findings (D&F) establishing the circumstances for not suspending the Department's procurement authority shall be executed by the Assistant Secretary for Administration.

[51 FR 40333, Nov. 6, 1986]

PART 2434—MAJOR SYSTEM ACQUISITIONS

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

2434.003 Responsibilities.

(a) The Senior Procurement Executive is responsible for establishing written procedures for implementation of A–109. Such procedures have been set out in internal Departmental directives.

[53 FR 46537, Nov. 17, 1988]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 2436.6—Architect-Engineer Services

Sec.
2436.602 Selection of firms for architect-engineer contracts.
2436.602–2 Evaluation boards.
2436.602–4 Selection authority.
2436.602–5 Short selection processes for contracts not to exceed the small purchase limitation.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2436.6—Architect-Engineer Services

2436.602 Selection of firms for architect-engineer contracts.

2436.602–2 Evaluation boards.

(a) Each architect-engineer evaluation board, whether permanent or ad hoc (which may include preselection boards), shall consist of at least three voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed chairperson. Non-voting advisors may also be appointed, including private practitioners in architecture, engineering and related professions. The members of a permanent board shall be appointed for a period of two years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate contracting activity:

(1) *Assistant Secretary* or equivalent for boards appointed at the Headquarters level;

(2) The cognizant program office head within the State or Area Office for boards appointed at the field level.

(c) *Conflict of interest.* Each board member, whether voting or nonvoting, shall be advised of, and presumed to be familiar with the regulations at 24 CFR Part 0, Standards of Conduct, regarding conflicts of interest. If at any time during the selection process a board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he or she will disqualify him or herself and call it to the attention of the chairperson for resolution and proper action. The chairperson will refer the matter to legal counsel.

(d) *Confidentiality.* The evaluation board is to be insulated from outside pressures, to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

[49 FR 7708, Mar. 1, 1984, as amended at 57 FR 59790, Dec. 15, 1992; 60 FR 46157, Sept. 5, 1995]

2436.602–4 Selection authority.

(a) The final selection decision shall be made by the appropriate Primary Organization Head (Headquarters) or the appropriate program office head at the cognizant State or Area Office (Field).

[60 FR 46158, Sept. 5, 1995]

2436.602–5 Short selection processes for contracts not to exceed the small purchase limitation.

The short selection process described in FAR 36.602–5(a) is authorized for use for contracts not expected to exceed the small purchase limitation.

[49 FR 7708, Mar. 1, 1984; 49 FR 10930, Mar. 23, 1984, as amended at 57 FR 59791, Dec. 15, 1992]

PART 2437—SERVICE CONTRACTING

Subpart 2437.1—Service Contracts—General

Sec.
2437.101 Definitions.
2437.110 Solicitation provisions and contract clauses.

Subpart 2437.2—Advisory and Assistance Services

2437.205 Management controls.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

Subpart 2437.1—Service Contracts—General

2437.101 Definitions.

Government Technical Representative (GTR) means that individual responsible for the technical direction, oversight, and evaluation of the Contractor's performance.

[53 FR 46537, Nov. 17, 1988]

2437.110 Solicitation provisions and contract clauses.[4]

(a) The Contracting Officer shall insert the clause at 2452.237–70, Key Personnel, in solicitations and contracts when it is necessary for contract performance to identify Contractor Key personnel.

(b) The Contracting Officer shall insert the clause at 2452.237–71, Reproduction of Reports, in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

(c) The Contracting Officer shall insert the clause at 2452.237–72, Coordination of Data Collection Activities, in solicitations and contracts where the Contractor is required to collect information from ten or more public respondents.

(d) The Contracting Officer shall insert the clause at 2452.237–73, Conduct of Work, in all service contracts.

(e) The Contracting Officer shall insert the clause at 2452.237–74, Technical Direction, in all cost-reimbursement solicitations and contracts for services.

(f) The Contracting Officer shall insert the clause at 48 CFR 2452.237–75, Clearance of Personnel, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

(g) The contracting officer shall insert the clause at 2452.237–76 in solicitations and contracts that involve work on or access to sensitive automated systems.

(h) The Contracting Officer shall insert the clause at 2452.237–77, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any HUD office.

[53 FR 46537, Nov. 17, 1988, as amended at 57 FR 59791, Dec. 15, 1992; 61 FR 19472, May 1, 1996]

Subpart 2437.2—Advisory and Assistance Services

2437.205 Management controls.

Documentation of the contractor's performance and the utility of products or services delivered shall be recorded on Form HUD–24002, GTR Performance Assessment (Final) by the responsible Government Technical Representative. This form may also be used to document contractor performance on other contracts.

[60 FR 46158, Sept. 5, 1995]

[4] The HUDAR provisions in paragraphs (g) and (h) of this section have been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2442—CONTRACT ADMINISTRATION

Subpart 2442.7—Indirect Cost Rates

Sec.
2442.705 Final indirect cost rates.
2442.705–70 Contract clause.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.
2442.1107 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov 17, 1988, unless otherwise noted.

Subpart 2442.7—Indirect Cost Rates

2442.705 Final indirect cost rates.

2442.705–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.242–70, Indirect Costs, in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

Subpart 2442.11—Production Surveillance and Reporting

2442.1106 Reporting requirements.

(a) All contracts for professional or technical services exceeding $500,000 shall use HUD Form 441.1, ''Project Management System Baseline Plan,'' to outline how the Contractor proposes to carry out the contract work and HUD Form 661.1, ''Project Management System Progress Report,'' to monitor quantitative progress against the baseline plan. Each of these forms shall be accompanied by a narrative description. The Contracting Officer may waive the requirement to use these forms if he or she believes the Statement of Work or contractor's technical proposal are sufficiently specific or another acceptable means for project management is substituted. Contracts awarded under the Acquired Property Program are exempt from use of this reporting requirement. The prescribed forms may be used for contracts under $500,000, when determined necessary by the Contracting Officer.

[61 FR 19472, May 1, 1996]

2442.1107 Contract clause.

The Contracting Officer shall insert the clause at 48 CFR 2452.242–71, Project Management System, in solicitations and contracts for professional or technical services exceeding $500,000, unless the Contracting Officer determines that the Statement of Work or technical proposal is sufficiently specific, or another acceptable method for project management is substituted. Use of this clause in contracts below the stated threshold is at the discretion of the Contracting Officer.

[61 FR 19472, May 1, 1996]

PART 2446—QUALITY ASSURANCE

Subpart 2446.5—Acceptance

Sec.
2446.502 Responsibility for acceptance.
2446.502–70 Contract clause.

Subpart 2446.6—Material Inspection and Receiving Reports [Note]

Subpart 2446.7—Warranties

2446.710 Contract clauses.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46537, Nov. 17, 1988, unless otherwise noted.

Subpart 2446.5—Acceptance

2446.502 Responsibility for acceptance.

2446.502–70 Contract clause.

The Contracting Officer shall insert the clause at 2452.246–70, Inspection and Acceptance, in solicitations and contracts unless inspection and acceptance will be performed by someone other than the Government Technical Representative (GTR).

Subpart 2446.6—Material Inspection and Receiving Reports

NOTE: Inspection of contractor's performance shall be performed as often as necessary to protect HUD's interest. HUD Form 9519, Acquired Property Inspection Report, shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program. Distribution shall be as indicated on the form.

Subpart 2446.7—Warranties

2446.710 Contract clauses.

(c)(1) The contracting officer may include a clause substantially the same as FAR 52.246–19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, whenever it is in the Government's interest.

[57 FR 59791, Dec. 15, 1992]

PART 2449—TERMINATION OF CONTRACTS

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 49 FR 7708, Mar. 1, 1984, unless otherwise noted.

Subpart 2449.1—General Principles

2449.111 Review of proposed settlements.

The Head of the Contracting Activity shall establish internal procedures to ensure the independent review of proposed termination settlements in excess of $100,000.

PART 2451—USE OF GOVERNMENT SOURCES BY CONTRACTORS

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 53 FR 46538, Nov. 17, 1988, unless otherwise noted.

Subpart 2451.3—Contractor Use of Government Discount Air Passenger Transportation Rates

2451.303 Contract clause.

The Contracting Officer shall insert the clause at 2452.251–70, Contractor Employee Travel, in all cost-reimbursement contracts involving airline travel.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2452.2—Texts of Provisions and Clauses

Sec.
2452.203–70 Prohibition against the use of Federal employees.
2452.203–71 Certification regarding Federal employment.
2452.209–70 Organizational conflicts of interest notification.
2452.209–71 Organizational conflicts of interest certification.
2452.209–72 Organizational conflicts of interest.
2452.211–70 Contract period.
2452.215–70 Proposal content.
2452.216–70 Estimated cost, base fee, and award fee.
2452.216–71 Payment of base and award fee.
2452.216–72 Determination of award fee earned.
2452.216–73 Performance evaluation plan.
2452.216–74 Distribution of award fee.
2452.216–75 Unpriced task orders.
2452.219–70 Small, small disadvantaged, and women–owned small business subcontracting plan.
2452.222–70 Accessibility of meetings, conferences, and seminars to persons with disabilities.
2452.224–70 Freedom of Information Act notification.
2452.226–70 Certification of status as a minority business enterprise.
2452.232–70 Payment schedule and invoice submission (fixed-price).
2452.232–71 Voucher submission (cost-reimbursement).
2452.237–70 Key personnel.
2452.237–71 Reproduction of reports.
2452.237–72 Coordination of data collection activities.
2452.237–73 Conduct of work.
2452.237–74 Technical direction.
2452.237–75 Clearance of personnel.
2452.237–76 Background investigations for sensitive automated systems/applications.
2452.237–77 Observance of legal holidays and administrative leave.
2452.242–70 Indirect costs.
2452.242–71 Project management system.
2452.246–70 Inspection and acceptance.
2452.251–70 Contractor Employee Travel.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46538, Nov. 17, 1988, unless otherwise noted.

Subpart 2452.2—Texts of Provisions and Clauses

2452.203–70 Prohibition against the use of Federal employees.[5]

As prescribed in 2403.670, insert the following clause in solicitations and contracts:

PROHIBITION AGAINST THE USE OF FEDERAL EMPLOYEES

December 1992

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]

[57 FR 59791, Dec. 15, 1992]

2452.203–71 Certification regarding Federal employment.[6]

As prescribed in 2403.670, insert the following provision in solicitations:

CERTIFICATION REGARDING FEDERAL EMPLOYMENT

December 1992

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]

(Approved by the Office of Management and Budget under control number 2535–0091).

[57 FR 59791, Dec. 15, 1992]

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[5] This HUDAR clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

[6] This HUDAR provision has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

2452.209–70 Organizational conflicts of interest notification.

As prescribed in 2409.508–1, insert the following solicitation provision in all solicitations.

ORGANIZATIONAL CONFLICT OF INTEREST NOTIFICATION (FEB 1987)

(a) It is the Department of Housing and Urban Development's policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage.

(b) Offerors shall provide a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict. (Offerors should refer to FAR subpart 9.5 and HUDAR subpart 2409.5 for policies and procedures for avoiding, neutralizing, or mitigating organizational conflicts of interest).

(c) In the absence of any relevant interests referred to above, the offeror shall complete the certification at 2452.209–71, Organizational Conflicts of Interest Certification.

(d) No award shall be made until the disclosure or certification has been evaluated by the Contracting Officer. Failure to provide the disclosure or certification will be deemed to be a minor infraction and the offeror will be permitted to correct the omission within a time frame established by the Contracting Officer.

(e) Refusal to provide the disclosure or certification and any additional information as required, or the willful nondisclosure or misrepresentation of any relevant information shall disqualify the offeror.

(f) If the Contracting Officer determines that a potential conflict exists, the selected offeror shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. The terms of any special clause are subject to negotiation.

(End of provision)

2452.209–71 Organizational conflicts of interest certification.

As prescribed in 2409.508–1, insert the following solicitation provision in all solicitations.

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION (APR 1984)

The bidder or offeror certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed Government contract and the bidder or offeror's organizational, financial, contractual or other interests may, without some restriction on future activities:

(a) Result in an unfair competitive advantage to the offeror; or

(b) Impair the offeror's objectivity in performing the contract work.

☐ In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to Offeror(s) or Bidder(s) _____ possible performance of this procurement.

(End of provision)

2452.209–72 Organizational conflicts of interest.

As prescribed in 2409.508–2, insert the following contract clause in all contracts.

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor

has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

2452.211–70 Contract period.

As prescribed in 2411.404(a), insert the following clause in all solicitations and contracts:

CONTRACT PERIOD (APR 1984)

The Contractor shall complete all work hereunder, including delivery of the final report, if required, within _____ months from the effective date of the contract.

(End of clause)

[53 FR 46538, Nov. 17, 1988. Redesignated and amended at 61 FR 19472, May 1, 1996]

2452.215–70 Proposal content.

As prescribed in 2415.407(a), insert a provision substantially the same as the following:

PROPOSAL CONTENT (OCT 1995)

(a) Proposals shall be submitted in two parts as described in paragraphs (b) and (c) below. Each of the parts must be complete in itself so that evaluation of each part may be conducted independently, and so that the technical and management part may be evaluated strictly on its own merit. Proposals shall be submitted in the format, if any, prescribed elsewhere in this solicitation. Proposals shall be enclosed in sealed packaging and addressed to the office specified in the solicitation. The offeror's name and address, the solicitation number and the date and time specified in the solicitation for proposal submission must appear in writing on the outside of the package.

(b) Proposals shall be submitted in original and [insert number] copies of Part I and [insert number] copies of Part II.

(c) Part I—Technical and Management.

(1) *Prior experience.* The offeror shall provide evidence of the offeror's (i.e., firm's or organization's) prior and current experience in performing the work and/or providing the deliverables required by the solicitation.

(2) *Past Performance.* The offeror shall provide evidence of the offeror's past performance in accomplishing work—including meeting delivery dates and schedules—the same as, or substantially similar to, that required by the solicitation. The offeror shall provide references as follows [Contracting Officer insert specific instruction for reference check information required].

(3) *Personnel qualifications.* The offeror shall provide the names, position descriptions and information to support the qualifications—including relevant experience, specialized training and education—of all proposed key personnel (see the clause entitled ''Key Personnel'' in this solicitation for further definition). The term ''personnel'' shall include any proposed consultants and subcontractor employees who will perform duties of key personnel.

(4) *Management Capability*. The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(5) *Technical Capability*. The offeror shall provide a detailed description of how he/she proposes to conduct the work required under the proposed contract.

(6) *Mandatory Minimum Requirements.* The offeror shall provide evidence, including copies of documents, as appropriate of [contracting officer insert description of requirement(s), e.g., licenses, minimum experience, etc., or delete this paragraph if not applicable].

(d) Part II—Business Proposal.

(1) The Offeror shall complete the Representations and Certifications provided in Section K of this solicitation and include them in this Part II.

(2) The offeror shall provide information to support the offeror's proposed costs or prices as prescribed elsewhere in this Section L.

(End of Provision)

ALTERNATE I (OCT 1995)

Substitute paragraph (c) with the following:

(c) Part I—Technical and Management Information.

(1) *Prior experience.* The offeror shall provide evidence that the offeror's (i.e., firm's or organization's) prior experience meets the following minimum standards: [contracting officer insert specific experience requirements].

(2) *Past Performance.* The offeror shall provide evidence of the offeror's past performance as follows: [contracting officer insert specific performance requirements]. The offeror shall provide references as follows [contracting Officer insert specific instruction for reference check information required].

(3) *Personnel qualifications.* The offeror shall provide the names, position descriptions and evidence that proposed key personnel (see the clause entitled ''Key Personnel'' elsewhere in this solicitation for definition) meet the minimum qualifications described below. The term ''personnel'' includes any proposed consultants and subcontractor employees who will perform duties of key personnel. The minimum qualifications are: [contracting officer insert descriptions]

(4) *Management Capability*. The offeror shall provide evidence of his/her organization's ability to manage the work required under the proposed contract. The offeror shall describe how the work will be organized, the proposed staffing and the responsibilities and existing commitments of proposed staff.

(End of provision)

ALTERNATE II (OCT 1995)

Add the following subparagraph, numbered sequentially, to paragraph (c):

The offeror shall describe in detail how the offeror will maintain the security of automated systems as required by clause 2452.237–76 in Section I of this solicitation.

(End of provision)

[61 FR 19472, May 1, 1996]

2452.216–70 Estimated cost, base fee, and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

ESTIMATED COST, BASE FEE, AND AWARD FEE (APR 1984)

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the clause entitled Payment of Base and Award Fee. In addition, a maximum Award Fee of $ (Insert Amount) is available for payment in accordance with the clause entitled Payment of Base and Award Fee.

(End of clause)

2452.216–71 Payment of base and award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

PAYMENT OF BASE AND AWARD FEE (AUG 1987)

(a) *Base Fee.* The Government will make payment of the base fee in (insert number) increments on the schedule set forth in the Performance Evaluation Plan established by the Government. The amount payable shall be based on the progress toward completion of contract tasks as determined by the Contracting Officer. Payment of the base fee is subject to any withholdings as provided for elsewhere in this contract.

(b) *Award Fee.* The Government shall make payments of the award fee in accordance with the schedule established in the Performance Evaluation Plan and the Evaluation Period(s) set forth in the Distribution of Award Fee clause.

(End of clause)

2452.216–72 Determination of award fee earned.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

DETERMINATION OF AWARD FEE EARNED (AUG 1987)

(a) At the conclusion of each evaluation period specified in the Performance Evaluation Plan, the Government shall evaluate the contractor's performance and determine the amount, if any, of award fee earned by the contractor. The amount of award fee to be paid will be determined by the designated Fee Determination Official's (FDO) judgmental evaluation in accordance with the criteria set forth in the Performance Evaluation Plan. This decision is made unilaterally by the Government and is not subject to the disputes clause or the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 601 *et seq.* In reaching this decision, the FDO may consider any justification of award fee the Contractor submits, provided that the justification is submitted within (*insert number*) days after the end of an evaluation period. The FDO determination shall be in writing, shall set forth the basis of the

FDO's decision, and shall be sent to the Contractor within (*insert number*) days after the end of the evaluation period.

(b) The FDO may specify in any fee determination that fee not earned during the period evaluated may be accumulated and be allocated for award during a later evaluation period. The Distribution of Award Fee clause shall be amended to reflect the allocation.

(End of clause)

2452.216–73 Performance evaluation plan.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

PERFORMANCE EVALUATION PLAN (AUG 1987)

(a) The Government shall unilaterally establish a Performance Evaluation Plan that will provide the basis for the determination of the amount of award fee awarded under the contract. The Plan shall set forth evaluation criteria and percentage of award fee available for (1) technical functions, including schedule requirements if appropriate, (2) management functions; and, (3) cost functions. The Government shall furnish a copy of the Plan to the Contractor (*insert number*) days before the start of the first evaluation period.

(b) The Government may initially revise the Performance Evaluation Plan at any time during the contract term. The Contractor shall be notified at least (*insert number*) days before the start of the evaluation period to which the change will apply.

(End of clause)

2452.216–74 Distribution of award fee.

As prescribed in 2416.405(e)(1), insert the following clause in all award fee contracts.

DISTRIBUTION OF AWARD FEE (APR 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period: _____
Available Award Fee: _____

(b) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a prorata distribution associated with evaluation period activities or events as deteremined by the Fee Determination Official as designated in the contract. The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(1) The term ''base fee and award fee'' should be substituted for ''fixed-fee'' where it appears in the clause at FAR 52.243–2, Changes.

(2) The term ''base fee'' should be substituted for ''fee'' where it appears in the clauses at FAR 52.232–20, Limitation of Costs, and FAR 52.232–22, Limitation of Funds.

(3) The phrase ''base fee, if any, and such additional fee as may be awarded as provided for in the Schedule''; should be substituted for the term ''fee'' whenever it appears in the clause at FAR 52.216–7, Allowable Cost and Payment.

(End of clause)

2452.216–75 Unpriced task orders.

As prescribed in 2416.504(e), insert the following clause:

UNPRICED TASK ORDERS (APR 1984)

(a) Although it is anticipated that the Government and the Contractor will reach agreement on the total cost and fee or profit (if applicable) for the effort to be undertaken, prior to the issuance of a Task Order, there may be occasions when the Government wishes to authorize commencement of work prior to agreement on price. If this is the case, a Task Order may be issued which provides that the Contractor shall immediately commence performance of the services specified in the order, and shall submit a pricing proposal within fifteen days of receipt of the Task Order. Upon negotiations of the cost, a supplemental agreement shall be executed to make specific all terms and conditions of the Task Order. Failure to agree for costs ordered under this procedure shall be considered a dispute within the meaning of the clause of this contract entitled Disputes.

(b) Unpriced Task Orders shall indicate a ''not-to-exceed'' amount for the order; however, such amount shall not exceed 50 percent of the estimated cost of the Task Order. The Task Order shall only require the Contracting Officer's signature, but shall comply with all other Task Order requirements.

(End of clause)

[53 FR 46538, Nov. 17, 1988, as amended at 57 FR 59792, Dec. 15, 1992]

2452.219–70 Small, Small Disadvantaged, and Women–Owned Small Business Subcontracting Plan.

As prescribed in 2419.708, insert the following provision:

SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1995)

(a) This provision is not applicable to small business concerns.

(b) Consistent with the national interest, it is HUD policy that small business, women-owned small business and small business concerns that are owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of HUD work at the prime and subcontract level. Therefore, any contract awarded as a result of this solicitation shall fully comply with the intent of this policy, and the successful offeror shall agree to pursue an effective and comprehensive small business, small disadvantaged business and women-owned small business subcontracting program in compliance with the clause entitled ''Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.''

(c) Prior compliance with subcontracting plans shall be considered in determining the responsibility of an offeror (see FAR 9.104–3). Therefore, offerors having previous contracts with subcontracting plans shall provide the following information: agency name; agency point of contact; contract number; total contract value; a synopsis of the work required under the contract; the role(s) of the subcontractor(s) involved; and, the applicable goals and actual performance (dollars and percentages) for subcontracting with small, small disadvantaged and women-owned small business concerns. This information shall be provided for the three most recently (within the last three years) completed contracts with such subcontracting plans.

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219–9, ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.'' In accordance with that clause, the offeror shall submit the complete subcontracting plan with the response to this solicitation. The content of the final plan is subject to negotiation. Failure to submit a complete subcontracting plan and negotiate its content in good faith shall make the offeror ineligible for the contract award.

(End of provision)

ALTERNATE I (DEC 1992)

This alternate is required for all sealed bid solicitations exceeding $500,000 ($1,000,000 for construction) that are not set aside for small business. In such cases, insert the following paragraph (d) for that in the basic clause:

(d) The contract expected to result from this solicitation will contain the clause at FAR 52.219–9, ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Alternate I).'' The offeror submitting the apparent low bid, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small, small disadvantaged business and women-owned small business concerns, and which shall be included in and made a part of the resultant contract. The Contracting Officer will review the adequacy of the subcontracting plan as part of the responsibility determination (FAR Subpart 9.1). Failure to submit an adequate subcontracting plan where applicable shall make the bidder ineligible for the contract award.

(End of provision)

(Approved by the Office of Management and Budget under control number 2535-0091)

57 FR 59792, Dec. 15, 1992, as amended at 60 FR 46159, Sept. 5, 1995; 61 FR 19473, May 1, 1996]

2452.222–70 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 2422.1408(c), insert the following clause in all solicitations and contracts.

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (JUL 1988)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

2452.224–70 Freedom of Information Act notification.

As prescribed in 2424.202–70, insert the following provision in all solicitations.

FREEDOM OF INFORMATION ACT NOTIFICATION (APR 1984)

Proposals submitted in response to this solicitation are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether or not to release information contained in a proposal in the event a FOIA request is received, offerors may, through clear earmarking or otherwise, indicate those portions of their proposals which they believe should not be disclosed. While an offeror's advice will be considered by the Department in its determination whether to release requested

information or not, it must be emphasized that the Department is required by the FOIA to make an independent evaluation as to the information, notwithstanding the offeror's views. It is suggested that if an offeror believes that confidential treatment is appropriate, the basis for this view should be provided, where possible, because general assertions or blanket requests for confidentiality, without more information, are not particularly helpful to the Department in making determinations concerning the release of information under the Act. It should also be noted that the Department is required to segregate disclosable information from nondisclosable items, so particular care should be taken in the identification of each portion of which confidential treatment is requested. Offeror's views concerning confidentiality will be used to aid the Department in preparing its response to FOIA requests. Further, offerors should note that the presence or absence of such comments or earmarking regarding confidential information will have no bearing whatsoever on the evaluation of proposals submitted pursuant to this solicitation, nor will the absence of this earmarking automatically result in greater disclosure.

(End of provision)

2452.226–70 Certification of status as a minority business enterprise.

As prescribed in 2426.703, insert the following provision in all solicitations:

CERTIFICATION OF STATUS AS A MINORITY BUSINESS ENTERPRISE

(August 1995)

Bidder, Offeror or Supplier certifies that he or she _____ is, _____ is not, (check one), a minority business enterprise which is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(CHECK THE BOX APPLICABLE TO YOU)

[ ] Black Americans
[ ] Hispanic Americans
[ ] Native Americans
[ ] Asian Pacific Americans
[ ] Asian Indian Americans

[60 FR 46159, Sept. 5, 1995]

2452.232–70 Payment schedule and invoice submission (fixed-price).

As prescribed in 2432.908(a), insert the following clause in all fixed price solicitations and contracts.

PAYMENT SCHEDULE AND INVOICE SUBMISSION (FIXED-PRICE) (MAR 1988)

(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 Part I, Section B of this contract.

(USE PARAGRAPH (b) ONLY IF PARTIAL PAYMENTS APPLY. OTHERWISE PARAGRAPH (a) ABOVE ASSUMES THE CONTRACTOR WILL BE PAID THE FULL AMOUNT UPON COMPLETION OF ALL CONTRACT REQUIREMENTS)

(b) *Payment Schedule.* Payments will be made in accordance with the following partial payment schedule:

Partial payment number	Specific deliverable	Delivery date	Payment amount
1. [ ] 2. [ ] 3. [ ]			

(CONTINUE AS NECESSARY)

(c) *Submission of Invoices.* Invoices shall be submitted in an original and three (3) copies to the payment office identified in Block 12 of the SF–26 or Block 25 of the SF–33. To constitute a proper invoice, the invoice must include all items per FAR 52.232–25, ''Prompt Payment.''

To assist the Government in making timely payments, the Contractor is also requested to identify the appropriation number (from Block 14 if award is made on the SF–26 or Block 21 if award is made on the SF–33) on each invoice. The Contractor is also requested to identify on the envelope that an invoice is enclosed.

(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:

(INSERT APPROPRIATE ADDRESS)

(END OF CLAUSE)

ALTERNATE I (MAR 1988)

This alternate may be used in fixed-price contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (c) for that in the basic clause:

(c) Invoices shall be submitted in an original and three (3) copies to the office identified on the cover page of the contract (SF–26

or SF–33). To constitute a proper invoice, the invoice must include all items per FAR 52.232–25, ''Prompt Payment.''

[53 FR 46538, Nov. 17, 1988, as amended at 60 FR 46159, Sept. 5, 1995]

2452.232–71 Voucher submission (cost-reimbursement).

As prescribed in 2432.908(b), insert the following clause in all cost-reimbursement solicitations and contracts.

VOUCHER SUBMISSION (COST-REIMBURSEMENT) (MAR 1988)

(a) The Contractor shall submit, on a monthly basis (Contracting Officer may substitute a different time frame, if appropriate), an original and two (2) 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 distributed as follows, except for the final voucher which shall be submitted in all copies to the Contracting Officer.

Interim vouchers	Attention of	Address shown on face of contract in block
Original	Voucher Examiner	12
One copy	Contracting Officer	5
One copy	GTR	11

To assist the Government in making timely payments, the Contractor is requested to identify the appropriation number (from Block 14 of the SF 26) on each voucher. The Contractor is also requested to identify on the envelope that a voucher is enclosed.

(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:

(INSERT APPROPRIATE ADDRESS)

(END OF CLAUSE)

ALTERNATE I (MAR 1988)

This alternate may be used in cost-reimbursement contracts awarded by the Administrative Service Centers. In such cases, substitute the following paragraph (a) for that in the basic clause:

(a) The Contractor shall submit, on a monthly basis [Contracting Officer may substitute a different time frame, if appropriate], an original and three (3) 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 Contracting Officer specified on the cover page of the contract (SF–26 or SF–33).

[53 FR 46538, Nov. 17, 1988, as amended at 60 FR 46159, Sept. 5, 1995]

2452.237–70 Key personnel.

As prescribed in 2347.110(a), insert the following clause in solicitations and contracts when it is necessary for contract performance to identify the Contractor's key personnel.

KEY PERSONNEL (APR 1984)

The personnel specified below are considered to be essential to the work being performed under this contract. Prior to diverting any of the specified individuals to other projects, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. This clause may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

(List Key Personnel)

(End of clause)

2452.237–71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

REPRODUCTION OF REPORTS (APR 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be

produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

2452.237–72 Coordination of data collection activities.

As prescribed in 2437.110(c), insert the following clause in solicitations and contracts where the Contractor is required to collect identical information from ten or more public respondents.

COORDINATION OF DATA COLLECTION ACTIVITIES (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten or more public respondents, the Paperwork Reduction Act (44 U.S.C. 3501–3520) applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting Officer that the required Office of Management and Budget (OMB) final clearance was received.

(End of clause)

2452.237–73 Conduct of work.

As prescribed in 2437.110(d), insert the following clause in all contracts for services.

CONDUCT OF WORK (APR 1984)

(a) The Government Technical Representative (GTR) for liaison with the Contractor as to the conduct of work is _____, or a successor designated in writing by the Contracting Officer.

(b) The Contractor's work hereunder shall be carried out under the supervision of _____.

(END OF CLAUSE)

ALTERNATE I

This alternate is required for all fixed-price contracts for services. In such cases, add the following paragraph (c):

(c) The GTR shall provide direction on contract performance. Such direction must be within the contract scope of work and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243–1; (3) causes an increase or decrease in the cost of the contract; (4) alters the period of performance or delivery dates; or, (5) changes any of the other express terms or conditions of the contract.

[53 FR 46538, Nov. 17, 1988, as amended at 58 FR 49437, Sept. 23, 1993]

2452.237–74 Technical direction.

As prescribed in 2437.110(e), insert the following clause in all cost-reimbursement type solicitations and contracts.

TECHNICAL DIRECTION (JUN 1985)

(a) The GTR will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the contractor as to which areas the Contractor is to emphasize or pursue.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work.

The GTR does not have the authority to issue technical direction that: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in FAR 52.243–2; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the GTR or confirmed by him or her in writing within five calendar days after verbal issuance.

(End of clause)

2452.237–75 Clearance of personnel.

As prescribed in 2437.110(f), insert the following clause in solicitations and contracts where contractor personnel will be working on-site in any HUD office.

CLEARANCE OF PERSONNEL (JUNE 1995)

(a) The contractor shall submit to the Contracting Officer within five days after contract award, two (2) completed Forms FD–258, ''Fingerprint Chart'', one original and one copy of the SF 85P, ''Questionnaire for Public Trust Positions'', and one original and one copy of the OF 306, ''Declaration for Federal Employment'', for the contractor and all employees who have access to the building in performance of the contract work. These forms must be submitted for all replacement employees prior to entrance on duty. Necessary forms will be furnished by HUD. If the Contracting Officer receives an

unsuitable report on any employee after processing these forms or if the Contracting Officer finds a prospective employee to be unsuitable or unfit for his/her duties, the contractor shall be advised immediately that such employee cannot continue to work or be assigned to work under the contract.

(b) HUD shall have and exercise full and complete control over granting, denying, withholding, or terminating employment eligibility of contractor employees.

(c) Temporary identification/building passes shall be issued to each Contractor employee working on-site. The Contractor shall submit to the GTR a list of those employee(s) with their Social Security number(s). Building passes, when issued, shall indicate an expiration date not exceeding the first-year term of the contract. The passes shall be renewed for each succeeding option year, if any. The Contractor shall return, to the GTR, all building passes upon expiration of the contract, whenever the employment of any such employee is terminated, or when an employee no longer has a need for access to the building.

(End of clause)

[53 FR 46538, Nov. 17, 1988, as amended at 61 FR 19473, May 1, 1996]

2452.237–76 Background investigations for sensitive automated systems/applications.

As prescribed in 2437.110(g), insert the following clause:

BACKGROUND INVESTIGATIONS FOR SENSITIVE AUTOMATED SYSTEMS/APPLICATIONS DECEMBER 1992

(A) *General.* This contract involves work on or access to an automated system [name] that has a sensitivity rating of [3 or 4], as defined in Appendix A of HUD Handbook 2400.23, ''ADP Security.'' All contractor employees working on this contract are required to have a background investigation commensurate with the rating of the automated system (position designation of: 6, High Risk; 5, Moderate Risk; or 1, Low Risk) in accordance with Federal Personnel Manual (FPM) Chapters 731, 732, and 736. Any employee who is required to have a background investigation shall not be permitted to work on this contract without the required investigation; however, contractor employees in Low Risk positions are eligible for immediate (interim) approval if the contractor submits the required security package described in paragraph (c) of this section within 14 days of contract award. The contractor shall establish personnel security procedures that meet, as a minimum, the requirements of Handbook 2400.23 and shall provide a copy to the GTR.

(b) *Citizenship-related requirements.* Every contractor employee working on the sensitive applications of this contract shall satisfy at least one of the following requirements: (1) be a citizen living in the U.S.; or (2) owe allegiance to the U.S.

(c) *Approval process.* To obtain a background investigation, the contractor shall submit the following completed forms to the GTR for screening and transmittal to the Office of the Inspector General's (OIG) Security Staff for initiation of the required investigation: SF 85–P, Questionnaire for Public Trust Positions; SF 86A, Continuation Sheet (if needed); SF–171, Application for Federal Employment: FD–258, Fingerprint Chart; and other forms or information as may be necessary. An original and two copies of SF–171 and SF 85–P are necessary. The investigation process shall consist of: a range of personal background inquiries and contacts (written and personal) pertaining to verification of the information provided on the security forms. The background investigation may be waived by HUD upon presentation of acceptable evidence that an employee has received a timely appropriate background investigation.

Upon completion of the investigation process, the Contracting Officer, after conferring with the appropriate HUD offices, shall notify the contractor in writing of the individual's eligibility or ineligibility to work on this contract. The contractor is responsible for ensuring that such investigations are requested as necessary for the performance of this contract. If contractor personnel will be working on-site in any HUD office, the contractor shall comply with the requirements of HUDAR clause 2452.237–75—Clearance of Personnel and obtain building passes for those personnel.

(d) *Signed pledges.* The contractor shall require that any employees who may have access to the automated systems identified in Section C of this contract sign a pledge of nondisclosure of information. These pledges shall be signed by the employees before they are assigned to this contract and shall be maintained by the contractor for a period of three years after final payment under the contract.

(e) *Nondisclosure of information.* Neither the contractor nor any of its employees shall divulge or release data or information developed or obtained during performance of this contract, except to authorized Government personnel with an established need to know or upon written approval of the Contracting Officer. Information contained in all source documents and other media provided by HUD are the sole property of HUD.

(f) *Contract performance.* If HUD receives disqualifying information on a contractor employee, the contractor, upon written notice, will immediately remove the employee

from work on this contract. Contractor employees may be barred from working on this contract for failing to meet or maintain the suitability standards prescribed in FPM Chapter 731, as applicable. Failure to comply with the terms of this clause may result in termination for default.

(g) *Notification.* The contractor shall notify the Government Technical Representative (GTR) in writing (with a copy to the contracting officer) whenever a cleared employee terminates employment or is no longer working on this contract, and the GTR shall notify the HUD ADP Security Staff, who will notify the OIG Security Staff. The contractor shall immediately notify the Contracting Officer of any breach or suspected breach of security or any unauthorized disclosure of the information contained in the automated system specified in this contract.

(h) *Subcontracts.* The contractor shall incorporate this clause in all subcontracts where the requirements specified in paragraph (a) of this section are applicable to performance of the subcontract.

[End of clause]

(Approved by the Office of Management and Budget under control number 2535–0091)

[57 FR 59793, Dec. 15, 1992]

2452.237–77 Observance of legal holidays and administrative leave.[8]

As prescribed in 2437.110(h), insert the following clause:

OBSERVANCE OF LEGAL HOLIDAYS AND ADMINISTRATIVE LEAVE

December 1992

(a) The Department of Housing and Urban Development observes the following days as holidays:

New Year's Day
Martin Luther King's Birthday
Washington's Birthday
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. Observances 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 HUD 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 the 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.

[57 FR 59793, Dec. 15, 1992, as amended at 60 FR 46159, Sept. 5, 1995]

2452.242–70 Indirect costs.

As prescribed in 2442.705–70, insert the following clause in cost-reimbursement type solicitations and contracts when it is determined that the Contractor will be compensated for negotiated or provisional indirect cost rates pending establishment of final indirect cost rates.

[8] This HUDAR clause has been submitted to the FAR Secretariat for consideration as FAR coverage with Governmentwide application. In the event that similar FAR coverage is issued, HUD will rescind the corresponding HUDAR text.

INDIRECT COSTS (APR 1984)

(a) Pursuant to the provisions of the clause of this contract entitled, ''Allowable Cost and Payment'' the rates listed below are established. If the column entitled, ''Ceiling Rate'' has rates listed, the ceiling applies for those rates only. If there are no ceiling rates listed, ceilings do not apply to this contract and the provisions of paragraph (b) of this clause are not applicable.

Period	Category	Provisional rate	Ceiling rate	Base

Effective date until amended:

(b) For the term of this contract, the final indirect rates shall not exceed the ceiling rates listed above, if any. However, in the event the indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates agreed to herein, then the rates established by such cognizant audits shall apply (downward adjustment only). The Government shall not be obligated to pay any additional amounts on indirect rates above the ceiling rates set forth for the applicable period

(End of clause)

2452.242–71 Project management system.

As prescribed in 2442.1107, insert the following clause:

PROJECT MANAGEMENT SYSTEM (JUN 1984)

The Contractor shall provide to the GTR and Contracting Officer a project management system workplan and regular status reports showing actual progress against the workplan. The project management system utilizes two reporting forms (the HUD 441.1 Baseline Plan and the HUD 661.1 Progress Report), in addition to a narrative description. Briefly, the workplan and progress reports shall consist of the following:

Workplan

The workplan shall consist of a narrative description and a graphic summary (HUD 441.1) of the schedule and financial elements of the contract. The narrative shall: (1) describe the planned schedule; (2) identify each step in the work process required for completing the contract work and the period of time needed to accomplish each step, expressed in terms of calendar dates; (3) provide the staff, financial, and other resources allocated to each task; and, (4) provide the rationale for project organization, staff utilization, and other resources allocated to each task or activity. The HUD 441.1 shall show: (1) cumulative planned or budgeted costs of work scheduled for each reporting period over the life of the contract; and (2) the planned project schedule that traces, by reporting period, the task or sub-task start dates, periods of work in progress, and completion dates.

Progress Reports

Progress reports shall consist of a narrative report and the HUD 661.1 which depicts actual progress against planned progress. The narrative report shall: (1) provide a brief, factual summary description of technical progress made and costs incurred for each task (or group of tasks) during the reporting period; and, (2) identify significant problems and their impacts, causes, proposed corrective actions, and the effect that such corrective actions will have on the accomplishment of the contract objectives. The HUD 661.1 reproduces the Baseline Plan (HUD 441.1) and shall show: (1) the schedule status or the degree of completion of tasks/activities by time intervals; and, (2) cost status or the actual costs of work performed in accomplishing the tasks.

Specific and detailed guidance on preparing the forms and the narratives may be obtained from the GTR.

(End of clause)

[53 FR 46538, Nov. 17, 1988, as amended at 61 FR 19473, May 1, 1996]

2452.246–70 Inspection and acceptance.

As prescribed in 2446.502–70, insert the following clause in solicitations and contracts unless inspection and acceptance will be performed by someone other than the GTR.

INSPECTION AND ACCEPTANCE (APR 1984)

Inspection and acceptance of all work required under this contract shall be performed by the Government Technical Representative (GTR) identified in Block 11 of the SF–26, or other individual as designated by the Contracting Officer of GTR.

(End of clause)

2452.251–70 Contractor employee travel.

As prescribed in 2451.303, insert the following clause in all cost-reimbursement solicitations and contracts involving airline travel.

CONTRACTOR EMPLOYEE TRAVEL (FEB 1987)

(a) In the event that travel is required by this contract, the Contractor shall, to the maximum extent practical, utilize the travel discounts offered to Federal travelers, through use of contracted airline discount air fares, hotel and motel lodging rates, and car rental companies, which are available to contractor employees performing official Government contract business. Vendors providing these services may require that the contractor employee traveling on Government business be furnished with a letter of identification signed by the Contracting Officer.

(b) The Contractor shall provide the Contracting Officer with the names of those individuals who are required to travel per the contract terms. The Contracting Officer shall provide the Contractor with an identification letter for presentation to the participating vendors.

(c) The Contractor shall bill the Government for the actual costs incurred for travel in accordance with FAR 31.205–46, ensuring that other savings achieved through the use of any discount fares accrue to the Government.

(End of clause)

PART 2453—FORMS

Sec.
2453.000 Scope of part.

Subpart 2453.2—Prescription of Forms

2453.213 Small purchases and other simplified purchase procedures.
2453.213–70 HUD Form 24007, Purchase/Delivery Order Data File.
2453.213–71 HUD Form 2452, Purchase Order and Payment Authorization.
2453.215 Contracting by negotiation.
2453.215–70 HUD Form 4056, Abstract of Proposals.
2453.217 Special contracting methods.
2453.217–70 HUD Form 730, Award/Modification of Interagency Agreement.
2453.227 Patents, data, and copyrights.
2453.227–70 HUD Form 770, Report of Inventions and Subcontracts.
2453.237–70 HUD Form 24002, GTR Performance Assessment (Final).
2453.242 Contract administration.
2453.242–70 HUD Form 441.1, Project Management System Baseline Plan.
2453.242–71 HUD Form 661.1, Project Management System Progress Report.
2453.246 Quality Assurance.
2453.246–70 HUD Form 9519, Acquired Property Inspection Report.

AUTHORITY: 40 U.S.C. 486(c); 42 U.S.C. 3535(d).

SOURCE: 53 FR 46543, Nov. 17, 1988, unless otherwise noted.

2453.000 Scope of part.

This part prescribes Agency forms for use in acquisition and contains requirements and information generally applicable to the forms.

Subpart 2453.2—Prescription of Forms

2453.213 Small purchases and other simplified purchase procedures.

2453.213–70 HUD Form 24007. Purchase/Delivery Order Data File.

As prescribed in 2413.107(a)(4), HUD Form 24007 may be used by the Contracting Officer to record all relevant data pertaining to a small purchase, including recording written and oral quotations received and documenting orders against GSA contracts.

2453.213–71 HUD Form 2542, Purchase Order and Payment Authorization.

As prescribed in 2413.505–2(b), Contracting Officers may use HUD Form 2542 for small purchases charged to the FHA Fund.

[60 FR 46159, Sept. 5, 1995]

2453.215 Contracting by negotiation.

2453.215–70 HUD Form 4056, Abstract of Proposals.

As prescribed in 2415.411–70, HUD Form 4056 may be used by the Contracting Officer to record the names and addresses of offerors whose proposals are received before the stated deadline.

2453.217 Special contracting methods.

2453.217–70 HUD Form 730, Award/Modification of Interagency Agreement.

As prescribed in 2417.504(b), HUD Form 730 shall be used by Contracting Officers when placing or modifying an order for supplies or services from another Government agency.

2453.227 Patents, data, and copyrights.

2453.227–70 HUD Form 770, Report of Inventions and Subcontracts.

As prescribed in 2427.305–2, HUD Form 770 shall be completed by the Contractor, and submitted to the Contracting Officer, if requested, upon completion of the contract.

2453.237–70 HUD Form 24002, GTR Performance Assessment (Final).

As prescribed in 2437.205, Government Technical Representatives shall use HUD Form 24002 to document the contractor's performance and the utility of products or services delivered. This form may also be used for other contracts.

[60 FR 46159, Sept. 5, 1995]

2453.242 Contract administration.

2453.242–70 HUD Form 441.1, Project Management System Baseline Plan.

As prescribed in 2442.1106(a), HUD Form 441.1 shall be used in contract for professional or technical services exceeding $100,000.00 by Contractors to show how they propose to carry out the contract work. The requirement may be waived by the Contracting Officer if he or she believes that the Statement of Work or Contractor's technical proposal is sufficiently specific or another acceptable means for project management is substituted.

2453.242–71 HUD Form 661.1, Project Management System Progress Report.

As prescribed in 2442.1106(a), HUD Form 661.1 shall be used in conjunction with the HUD Form 441.1 to monitor quantitative progress against the baseline plan. The 661.1 need not be used if use of HUD Form 441.1 has been waived by the Contracting Officer; however, some acceptable means of progress reporting must be substituted.

2453.246 Quality Assurance.

2453.246–70 HUD Form 9519, Acquired Property Inspection Report.

As prescribed in 2446.6, HUD Form 9519 shall be used to document inspection and acceptance for work performed on properties under the Acquired Property Program.

CHAPTER 25—NATIONAL SCIENCE FOUNDATION

(Parts 2500 to 2599)

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 2501—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2501.1—Purpose, Authority, Issuance

Sec.
2501.101 Purpose.
2501.102 Authority.
2501.103 Applicability.
2501.104 Issuance.
2501.104–1 Publication and code arrangement.
2501.104–2 Arrangement of regulations.

Subpart 2501.4—Deviations From the FAR

2501.403 Individual deviations.
2501.404 Class deviations.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.
2501.602 Contracting officers.
2501.602–1 Authority.

AUTHORITY: 42 U.S.C. 1870(a).

SOURCE: 49 FR 46744, Nov. 28, 1984, unless otherwise noted.

Subpart 2501.1—Purpose, Authority, Issuance

2501.101 Purpose.

These regulations implement and supplement the Federal Acquisition Regulations (FAR).

2501.102 Authority.

The NSF Acquisition Regulations are issued under the authority of section 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

2501.103 Applicability.

Except where a deviation is specifically authorized in accordance with subpart 2501.4 or otherwise authorized by law, the FAR and the NSFAR govern all NSF acquisitions.

2501.104 Issuance.

2501.104–1 Publication and code arrangement.

(a) The NSFAR is published in the daily issues of the FEDERAL REGISTER and, in cumulative form, in the Code of Federal Regulations.

(b) The NSFAR is issued as chapter 25 of title 48, CFR.

2501.104–2 Arrangement of regulations.

The NSFAR uses the same numbering system and arrangement used in the FAR. Where the NSFAR implements the FAR it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, Parts 70 and up are used by the NSFAR. Where the subject matter in the FAR requires no implementation the NSFAR contains no corresponding part.

Subpart 2501.4—Deviations From the FAR

2501.403 Individual deviations.

Individual deviations, affecting only one contracting action may be authorized by the NSF Procurement Executive.

2501.404 Class deviations.

Class deviations may be authorized by the NSF Procurement Executive subject to the limitations set forth in FAR subpart 1.4.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.

Authority and responsibility to contract for authorized supplies and services is vested in the Director, NSF, within the limits expressly provided by the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*). The NSF Procurement Executive is delegated overall responsibility by the Director for the Foundation's contracting activities.

2501.602 Contracting officers.

2501.602–1 Authority.

NSF Contracting Officers have authority to enter into, administer, or terminate contracts and make related determinations and findings to the extent of the authority delegated to them in writing by the NSF Procurement Executive.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2509—CONTRACTOR QUALIFICATIONS

Subpart 2509.4—Debarment, Suspension, and Ineligibility

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2509.400 Scope of subpart.
2509.403 Definitions.
2509.405 Effect of listing.
2509.405–1 Continuation of current contracts.
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2509.406 Debarment.
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2509.407 Suspension.
2509.407–1 General.
2509.407–3 Procedures.
2509.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
2509.410 Appeals.

AUTHORITY: Sec. 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

SOURCE: 57 FR 34881, Aug. 7, 1992, unless otherwise noted.

Subpart 2509.4—Debarment, Suspension, and Ineligibility

2509.400 Scope of subpart.

This subpart supplements subpart 9.4 of the Federal Acquisition Regulation by prescribing NSF policies and procedures and assigning responsibility for making debarment and suspension decisions. Nothing in this subpart is intended to alter the effect of subpart 9.4.

2509.403 Definitions.

The NSF Deputy Director is the ''debarring official'' and ''suspending official'' for the Foundation. All duties assigned to the NSF Deputy Director by this regulation or by subpart 9.4 of the Federal Acquisition Regulation may be delegated by him or her to any officer or employee of the Foundation.

2509.405 Effect of listing.

2509.405–1 Continuation of current contracts.

(a) The NSF Deputy Director will decide whether to continue NSF contracts or subcontracts in existence at the time a contractor is debarred, suspended, or proposed for debarment.

(b) The NSF Deputy Director will decide whether to renew or otherwise extend the duration of NSF contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment. He or she will prepare a written statement of the compelling reasons for renewal and extension.

2509.405–2 Restrictions on subcontracting.

The NSF Deputy Director may authorize a contracting officer to consent to a subcontract with a contractor debarred, suspended, or proposed for debarment. Her or she will prepare a written statement of the compelling reasons for such approval.

2509.406 Debarment.

2509.406–1 General.

(c) The NSF Deputy Director will decide whether to enter into a contract with a contractor that is debarred or proposed for debarment. He or she will prepare a written statement of the compelling reasons justifying continued business dealings between the Foundation and the contractor.

2509.406–3 Procedures.

(a) Any NSF employee who becomes aware of circumstances that may serve as the basis for debarment of a contractor will promptly report them to the NSF Office of Inspector General (OIG) and the debarring official. OIG will investigate the circumstances and, if it determines appropriate, prepare a written referral of the matter to the debarring official.

(b) Upon receipt of a referral from the NSF Office of Inspector General, the debarring official will determine, in consultation as appropriate with OIG, the NSF Office of the General Counsel, the NSF Procurement Executive, and program officials, what additional steps are necessary and appropriate to make a decision in accordance with the requirements of 48 CFR 9.406–3.

2509.407 Suspension.

2509.407–1 General.

(d) The NSF Deputy Director will decide whether to enter into a contract with a suspended contractor. He or she will prepare a written statement of the compelling reasons justifying continued business dealings between the Foundation and the contractor.

2509.407–3 Procedures.

(a) Any NSF employee who becomes aware of circumstances that may serve as the basis for suspension of a contractor will promptly report them to the NSF Office of Inspector General (OIG) and the suspending official. OIG will investigate the circumstances and, if it determines appropriate, prepare a written referral of the matter to the suspending official.

(b) Upon receipt of a referral from the NSF Office of Inspector General, the suspending official will determine, in consultation as appropriate with OIG, the NSF Office of the General Counsel, the NSF Procurement Executive, and program officials, what additional steps are necessary and appropriate to make a decision in accordance with the requirements of 48 CFR 9.407–3.

2509.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2) NSF contracting officers will notify the Office of Inspector General and the Deputy Director whenever information submitted by offerors in compliance with the Certifications Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters provisions in solicitations indicates the existence of an indictment, charge, conviction, or civil judgment.

2509.410 Appeals.

(a) A debarred or suspended contractor may appeal to the Director in writing within 30 days after receiving notice of the debarring or suspending official's decision in accordance with 48 CFR 9.406–3(e) or §9.407–3(d)(4). The debarring or suspending official's decision becomes a final administrative action if not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2515—CONTRACTING BY NEGOTIATION

AUTHORITY: 42 U.S.C. 1870(c).

SOURCE: 49 FR 46744, Nov. 28, 1984, unless otherwise noted.

Subpart 2515.2—Negotiation Authorities

2515.215–70 NSF negotiation authorities.

(a) *Authorities.* Citation: 42 U.S.C. 1870(c).

(b) *Application.* When an NSF contract is for scientific activities which are determined by the NSF contracting officer to be ''necessary to carry out the purposes of the NSF Act,'' then 41 U.S.C. 252(c)(15) is applicable and the contract may be entered into through negotiation rather than formal advertising. The Foundation's contracting officer may, in lieu of reliance on 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15), utilize other applicable negotiating authorities at his or her discretion. 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15) may also be used to authorize negotiation if the Foundation is carrying out, ''at the request of the Secretary of State or Secretary of Defense, specific scientific activities in connection with matters relating to international cooperation or national security.'' Contracts or their modifications entered into under this authority may be done so without legal consideration and without performance or other bonds.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2527—PATENTS, DATA, AND COPYRIGHTS

Subpart 2527.70—Disposition of Rights in Inventions

Sec.
2527.7001 General.
2527.7002 NSF patent policy.

Subpart 2527.71—Data Rights—[Reserved]

AUTHORITY: 35 U.S.C. 200–212; 42 U.S.C. 1870(e) and 1871); and the Presidential Memorandum entitled ''Government Patent Policy'', issued February 18, 1983.

Subpart 2527.70—Disposition of Rights in Inventions

2527.7001 General.

National Science Foundation policies, procedures, and clauses governing allocation of rights to inventions made under NSF contracts, grants, and cooperative agreements are codified as part 650 of title 45 of the Code of Federal Regulations.

[57 FR 34882, Aug. 7, 1992, as amended at 61 FR 51022, Sept. 30, 1996]

2527.7002 NSF patent policy.

As authorized by the National Science Board at its 230th meeting, October 15–16, 1981, the Director of the National Science Foundation has adopted the following statement of NSF patent policy.

(a) In accordance with by the Bayh-Dole Act and the Presidential Memorandum entitled ''Government Patent Policy'' issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Department of Commerce in all its funding agreements for the performance of experimental, developmental, or research work, including awards made to foreign entities, unless the Foundation determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.

(c) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee, or the inventor's employer if other than the awardee, shows that it would be harmed by that action.

(d) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

[57 FR 34882, Aug. 7, 1992]

Subpart 2527.71—Data Rights—[Reserved]

PART 2532—CONTRACT FINANCING

Subpart 2532.4—Advance Payments

Sec.
2532.401 Statutory authority.
2532.403 Applicability.

AUTHORITY: 42 U.S.C. 1870(d).

SOURCE: 49 FR 46745, Nov. 28, 1984, unless otherwise noted.

Subpart 2532.4—Advance Payments

2532.401 Statutory authority.

The NSF Act (42 U.S.C. 1870(d)) provides that advance, progress, or other payments which relate to scientific activities or scientific information may

be made without regard to the provisions of section 3324 of title 31 of the United States Code.

[49 FR 46745, Nov. 28, 1984, as amended at 61 FR 51022, Sept. 30, 1996]

2532.403 Applicability.

Advance payments may be made in any amount not exceeding the contract price, provided (a) the amount of the advance payment is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (b) such advance payment is appropriate in order to contract for the required work.

CHAPTER 28—DEPARTMENT OF JUSTICE

(Parts 2800 to 2899)

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SUBCHAPTER A—GENERAL

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

Subpart 2801.1—Purpose, Authority, Issuance

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2801.101 Purpose.

Subpart 2801.2—Administration

2801.270 Amendment of regulation.
2801.270–1 Revisions.
2801.270–3 Effective date.
2801.270–4 Numbering.

Subpart 2801.3—Agency Acquisition Regulations

2801.301 Policy.
2801.303 Codification and public participation.
2801.304 Agency control and compliance procedures.

Subpart 2801.4—Deviations From the Federal Acquisition Regulations and the Justice Acquisition Regulations

2801.403 Individual deviations.
2801.404 Class deviations.
2801.470 Requests for class deviations.

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

2801.601 General.
2801.602–3 Ratification of unauthorized commitments.
2801.602–70 Office of the Procurement Executive.
2801.603 Selection, appointment and termination of appointment.
2801.603–2 Selection.
2801.670 Department of Justice Procurement Career Management Program.

Subpart 2801.70—Contracting Officer's Technical Representative

2801.7001–701 General.
2801.7001–702 Selection, appointment, limitation of authority.
2801.7001–703 Performance standards.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4450, Jan. 30, 1985, unless otherwise noted.

Subpart 2801.1—Purpose, Authority, Issuance

2801.101 Purpose.

The JAR is established to provide procurement regulations that supplement the Federal Acquisition Regulation (FAR) (48 Code of Federal Regulations (CFR), chapter 1). As such, the regulations contained in the JAR will include coverage of only those areas where agency implementation is required by the FAR, or where Department of Justice policies and procedures exist that supplement FAR coverage and directly affect the contractual relationship between the Department and potential or existing contractors. The JAR will not repeat or supplement FAR coverage where considered unnecessary. The JAR is not a complete system of regulations and must be used in conjunction with the FAR.

Subpart 2801.2—Administration

SOURCE: 57 FR 24555, June 10, 1992, unless otherwise noted.

2801.270 Amendment of regulation.

This Regulation will be amended from time to time to set forth improved procedures which reduce contract preparation time, simplify and standardize contract forms, improve the contracting process and reflect changes in statutes, Executive Orders, the FAR and other policies. Acquisition personnel are encouraged to submit suggestions, based on operating experience, for improving and simplifying the procedures set forth in this Regulation. Such suggestions should be submitted through the Bureau Chief of Procurement to the Office of the Procurement Executive.

2801.270–1 Revisions.

This Regulation will be amended by issuance of Justice Acquisition Circulars (JACs) containing loose-leaf replacement pages which revise parts, subparts, paragraphs or subparagraphs.

A vertical bar (edit bar) at the beginning or end of a line indicates that a change has been made within that line.

2801.270–3 Effective date.

(a) Statements in Justice Acquisition Circulars and Policy Directives to the effect that the material published therein is ''effective upon receipt,'' or upon a specified date, or that changes set forth in the Circulars or Directives are ''to be used upon receipt,'' mean that any new or revised clauses or forms included in the Circulars or Directives shall be included in invitations for bids and requests for proposals issued thereafter.

(b) Procurements initiated after receipt of new or revised clauses should include such clauses.

(c) Unless otherwise stated, invitations for bids which have been issued and bilateral agreements, upon which negotiations have been completed prior to the receipt of new or revised contract clauses, need not be amended to include the new or revised clauses, if such amendment would unduly delay the procurement action.

2801.270–4 Numbering.

Justice Acquisition Circulars will be consecutively numbered beginning with the number 1, after each rewrite and publication of the Justice Acquisition Regulations.

[60 FR 40108, Aug. 7, 1995]

Subpart 2801.3—Agency Acquisition Regulations

2801.301 Policy.

(a) In accordance with FAR 1.301(b) and paragraph (c) of this section, the Department may issue acquisition regulations that supplement or implement the FAR.

(b) Subject to the authority in paragraph (c) of this section, the Department may also issue internal policies and procedures for the efficient administration of its procurement programs and to meet the specific needs of the agency.

(c) Regulations and internal policies and procedures under the JAR are issued in accordance with the lawful authority vested in the Attorney General. Authority to issue department wide acquisition regulations has been delegated by Attorney General Order 1085–85 to the Office of the Procurement Executive, subject to the review of the Assistant Attorney General of Administration (AAG/A).

(d) The JAR consists of: (1) Department wide regulations which supplement or implement the FAR and which directly affect the contractual relationship between the Department's existing or potential contractors;

(2) Published and codified bureau regulations which supplement and implement the FAR and directly affect the contractual relationship;

(3) Published internally but not codified department wide policies and procedures which provide administrative guidance in the acquisition process in accordance with FAR 1.301(b); and

(4) Published internally but not codified bureau internal policies and procedures which provide administrative guidance in the acquisition process in accordance with FAR 1.301(b).

[50 FR 4450, Jan. 30, 1985, as amended at 50 FR 29798, July 22, 1985; 53 FR 49665, Dec. 9, 1988]

2801.303 Codification and public participation.

(a) Implementing and supplemental regulations issued under the JAR are codified under chapter 28 of title 48 of the CFR and conform to the numbering system specified in FAR 1.303.

(b) Department wide regulations (see 2801.301(d)(1)) for which there *is* a FAR counterpart or assigned part, subpart, section, or subsection numbers 2801 through 2869. Department wide material for which there is *no* FAR counterpart shall be codified using part, subpart, section, or subsection numbers 70 through 79. For example, the Department of Justice (DOJ) assigned chapter number in title 48 is 28, part 2870, subpart 2801.70, section 2801.370, or subsection 2801.370–70.

(c) Bureauwide regulations (see 2801.301(d)(2)) are assigned parts 2880 through 2899 under 48 CFR as follows:

2880—2881 Justice Management Division
2882—2883 Drug Enforcement Administration
2884—2885 Federal Bureau of Investigation
2886—2887 Federal Prison Industries
2888—2889 Office of Justice Programs

2890—2891 U.S. Marshals Service
2892—2893 Immigration and Naturalization Service
2894—2895 Bureau of Prisons
2896—2899 [Reserved]

(d) Public participation in the development of the JAR, including subsequent significant amendments or revision, shall be provided by a notice in the FEDERAL REGISTER. Normally, at least 60 days will be provided for comments. In the event of urgency, regulations may be published in final form without an initial comment period. Such instances will be fully justified in the FEDERAL REGISTER notice and give invitation and consideration to comments received after publication within the time period specified in the notice.

2801.304 Agency control and compliance procedures.

(a) The AAG/A shall review and approve all department wide and bureau-wide acquisition regulations prior to publication in the FEDERAL REGISTER to insure compliance with departmental policy and consistency with the FAR.

(b) The Procurement Executive will review all bureau unpublished internal acquisition policies and provide comments prior to their implementation.

[50 FR 4450, Jan. 30, 1985, as amended at 50 FR 29798, July 22, 1985; 60 FR 40108, Aug. 7, 1995]

Subpart 2801.4—Deviations From the Federal Acquisition Regulations and the Justice Acquisition Regulations

2801.403 Individual deviations.

Individual deviations from the FAR or the JAR shall be approved by the head of the contracting activity (HCA). A copy of the deviation shall be included in the contract file. Copies of all deviations will be provided to the Procurement Executive.

[60 FR 40108, Aug. 7, 1995]

2801.404 Class deviations.

Requests for class deviations from the FAR or the JAR shall be submitted to the Procurement Executive. The Procurement Executive will consult with the chairperson of the Civilian Agency Acquisition Council, as appropriate, and send his recommendations to the Assistant Attorney General for Administration. The Assistant Attorney General for Administration will grant or deny requests for such deviations. For the purposes of this regulation, requests for deviations involving basic ordering agreements, master type contracts or situations where multiple awards are made on one solicitation are considered to involve more than one contract and are therefore considered to be class deviation requests.

[54 FR 40877, Oct. 4, 1989]

2801.470 Requests for class deviations.

Requests for approval of class deviations to the FAR of the JAR shall be forwarded to the Procurement Executive. Such requests will be signed by the bureau procurement chief. Requests for class deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain sufficient written justification to evaluate the request.

[60 FR 40109, Aug. 7, 1995]

Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

2801.601 General.

(a) In accordance with Attorney General Order 1687–93, the authority vested in the Attorney General with respect to contractual actions, for goods and services, is delegated to the following officials:

(1) Assistant Attorney General for Administration (for the offices, boards, and divisions (OBDs);

(2) Director, Federal Bureau of Investigation;

(3) Director, Bureau of Prisons;

(4) Commissioner, Federal Prison Industries;

(5) Commissioner, Immigration and Naturalization Service;

(6) Administrator, Drug Enforcement Administration;

(7) Assistant Attorney General, Office of Justice Programs;

(8) Director, U.S. Marshals Service;

(9) Director, National Institute of Corrections; and

(10) Inspector General

(b) In accordance with Attorney General Order 1688–93, the authority vested in the Attorney General with respect to acquisition by lease or purchase of any interest in real property has been redelegated to the Assistant Attorney General for Administration.

(1) The following authorities have been redelegated to the Director, Facilities and Administrative Services Staff, JMD, for the efficient and proper administration of the Department's real property operations:

(i) Acquire by lease or purchase any interest in real property for all components of the Department of Justice.

(ii) Secure delegations of lease acquisition authority from GSA for all components of the Department.

(iii) Approve ratification requests of $5,000 or less with respect to interests in real property.

(iv) Only the authority contained in paragraph (b)(1)(i) of this section may be redelegated.

(2) Authority contained in paragraph (b)(1)(i) is redelegated to the heads of Bureaus, as defined in the Order as follows:

(i) Assistant Attorney General for Administration (for the offices, boards, divisions, United States Attorneys, and United States Trustees);

(ii) Director, Federal Bureau of Investigation;

(iii) Director, Bureau of Prisons;

(iv) Commissioner, Federal Prison Industries, Inc.;

(v) Commissioner, Immigration and Naturalization Service;

(vi) Administrator, Drug Enforcement Administration;

(vii) Assistant Attorney General, Office of Justice Programs;

(viii) Director, United States Marshals Service; and

(ix) Inspector General, Office of the Inspector General.

(c) The acquisition authority delegated to the officials in 2801.601 (a) and (b)(2) may be redelegated to subordinate officials as necessary for the efficient and proper administration of the Department's acquisition operations. Such redelegated authority shall expressly state whether it carries the power of redelegation and the limits, if any, of the redelegation of authority.

(d) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

(e) When exercising delegated contracting officer authority, a designated employee shall be identified as the contracting officer and shall function within the limits prescribed by law, the FAR, the JAR, and his/her delegation of contracting authority. Additionally, real property contracting officers shall be subject to the GSAR and the JPMR.

(f) A contracting officer shall maintain evidence of his/her delegation of authority and while functioning as a contracting officer, shall make such evidence available upon request.

[58 FR 68774, Dec. 29, 1993, as amended at 60 FR 16065, Mar. 29, 1995]

2801.602–3 Ratification of unauthorized commitments.

The HCA may delegate the authority to ratify unauthorized commitments to the chief of the contracting office, except for those actions effected by his or her office. Dollar thresholds for delegations made under this section will be determined by the HCA. Copies of all ratifications are to be provided to the Procurement Executive.

[60 FR 40109, Aug. 7, 1995]

2801.602–70 Office of the Procurement Executive.

(a)(1) The contracting officer shall forward the proposed contract action to the Office of the Procurement Executive for review prior to execution of any contractual action which:

(i) Exceeds $50,000 and was solicited using other than full and open competition procedures, including amendments or modifications to these contracts which cause the total contract costs to exceed $50,000;

(ii) Exceeds $100,000, and was solicited using full and open competition procedures, including amendments or modifications to these contracts which

cause the total contract costs to exceed $100,000; or

(iii) Is evaluated on the basis of system life costs and/or is evaluated on the basis of option pricing regardless of dollar value;

(2) For the purposes of this section contractual actions include all preaward, award, and post-award contractual actions above the thresholds in paragraphs (a)(1) (i) through (iii) including, but not limited to modifications, ratifications, and options, but excluding orders from Federal Supply Schedules and orders from Basic Ordering Agreements. Review by the Office of the Procurement Executive is applicable to all organization elements in the Department, with the exception of the FBI as noted in this section. It is the responsibility of the FBI's Contract Review Board to ensure that procurement actions for goods and services are awarded in conformity with applicable statutes, regulations, and procedures. This exemption, however, does not exempt the FBI from the review by the Office of the Procurement Executive of all real property procurement actions above the thresholds cited in paragraphs (a)(1) (i) through (iii) of this section, or from other oversight responsibilities of the Office of the Procurement Executive, including Procurement Executive review and approval of justifications for other than full and open competition on contracts over $10 million.

(b) Prior to submission to the Procurement Executive, the legal officer for each Bureau procurement activity is responsible for reviewing and approving all such procurement actions for legal sufficiency.

(c) The AAG/A and/or the Procurement Executive may waive any requirements for preaward contract review, except those imposed by statute. Requests for waivers shall be submitted to the Procurement Executive in accordance with paragraph (d) of this section.

(d) A request for a waiver must be submitted in writing by the head of the contracting activity and include a detailed explanation as to why a waiver is required, as well as information explaining reasons why a contract or class of contracts cannot be reviewed on a preaward basis. Oral waivers may be requested and granted under circumstances of compelling urgency, but written documentation of the waiver shall be made as soon as time permits. All contract documents that are available at the time a waiver request is made must accompany the request for review. All available documents will be reviewed to assure that the award is legally sufficient prior to the granting of a waiver. A postaward review of the completed contract file is required. Waivers will not be granted near the end of a fiscal year for the purpose of obligating year end funds.

(e) In accordance with Attorney General Orders 1687–93 and 1688–93, the head of a Bureau may appeal a decision of the Procurement Executive to the Contract Appeals Panel (Panel), in writing, within 15 calendar days after receipt of the decision of the Procurement Executive. The Panel shall be composed of the Deputy Attorney General who shall serve as chairperson, the Associate Attorney General and the Assistant Attorney General for Administration. The Panel shall meet on an ad hoc basis as necessary and determined by the chairperson. When appealing a decision of the Procurement Executive, the head of the Bureau shall follow the procedures described in paragraphs (e)(1) through (4) of this section.

(1) The appeal file shall be submitted through the Office of the Procurement Executive (OPE) to the Deputy Attorney General as Chairperson of the Contract Appeals Panel. Submission of the appeal through the OPE is required so that the Procurement Executive may provide a written response to the issues raised in the appeal and, due to the ad hoc nature of the Contract Appeals Panel, provide a location for the collection and maintenance of appeal documents and files. The Procurement Executive shall forward the appeal file to the Chairperson within five working days of receipt.

(2) *Content of the appeal file.* The appeal file must be complete in that it fully addresses the issue(s) being appealed. The file shall include a copy of the proposed contract or other award action, documents relied upon by the contracting officer in taking the action

under dispute, the Procurement Executive's decision and a statement of facts setting forth the basis on which the appeal is made. The statement of facts shall cite, where applicable, procurement regulations, statutes, or decisions by other authorities, such as GAO decisions, that support or form the basis of the appeal. A summary shall be provided stating the resolution requested by the Bureau. An original and three copies of the appeal file shall be submitted.

(3) The head of the Bureau shall also submit to the OPE, with the appeal file, the original contract file as submitted to the OPE for review.

(4) The Contract Appeals Panel, following review and consideration of the appeal shall issue its decision in writing to the head of the Bureau through the Office of the Procurement Executive and return, with the decision, all documents submitted by the Bureau. Unless the Attorney General directs that the matter be referred to him/her, the decision of the Panel will be the final Department of Justice position as to whether a particular procurement action complies with the applicable statute, regulation, policy or procedure.

[58 FR 68775, Dec. 29, 1993, as amended at 60 FR 40109, Aug. 7, 1995]

2801.603 Selection, appointment and termination of appointment.

2801.603–2 Selection.

Selection of contracting officers shall be in accordance with criteria and procedures established by each Bureau Procurement Chief in his or her component.

[60 FR 16066, Mar. 29, 1995]

2801.670 Department of Justice Procurement Career Management Program.

(a) Each Bureau Procurement Chief shall develop a procurement career management program for contracting personnel in his or her component.

(b) The program shall cover all contracting personnel with less than seven year experience in the categories described below:

(1) Occupational series 1102;

(2) Contracting officers with contracting authority above the simplified acquisition threshold;

(3) Occupational series 1105, other individuals performing purchasing duties and individuals with contracting authority at or under the simplified acquisition threshold.

(c)(1) The program shall include:

(i) An individual assessment by a supervisor of each covered employee's state of competence to perform the full range of potential duties of his or his job; and

(ii) An individual development plan to schedule classroom, on-the-job training, or other training to develop the employee's skill level to an appropriate level in each area of competence necessary to perform his or her job.

(2) Individual assessments and development plans should be designed to fit the needs of the component, but they should build upon the units of competence and instruction prepared by the Federal Acquisition Institute wherever feasible. Individual development plans should attempt to bring the employee to an appropriate level of skill in all necessary competencies by the time the employee has obtained seven years of experience in the field of procurement. In general, a proficiency skill level of 3, as defined in Attachment 1 to OFPP Policy Letter 92–3, shall be attained for any contracting duty that is actually required to be performed on the job.

(3) Employees who perform only purchasing duties, regardless of occupational series, shall be required to obtain the requisite level of skill only in competencies involving small purchases. If the employee's duties are expanded to include contracting duties, then skill in procurement competencies must be assessed and developed.

(4) Individual assessments of covered employee skills shall be completed by June 27, 1995, or within 90 days of the employee's entry on duty.

[60 FR 16066, Mar. 29, 1995]

Subpart 2801.70—Contracting Officer's Technical Representative

SOURCE: 56 FR 37860, Aug. 9, 1991, unless otherwise noted.

2801.7001–701 General.

Contracting officers may appoint individuals selected by program offices to act as authorized representatives in the monitoring and administration of a contract. Such officials shall be designated as Contracting Officers' Technical Representatives (COTR's).

2801.7001–702 Selection, appointment, limitation of authority.

(a) *COTR Standards Program.* This subpart sets forth policies and procedures for establishing standards for COTR's in DOJ. The program sets forth minimum standards for individuals to be eligible for an appointment as a COTR.

(b) *Applicability.* The eligibility requirements of this subpart apply to all individuals who are designated by the contracting officer as COTR's.

(c) *Eligibility standards.* To be determined eligible for an appointment as a DOJ COTR, the following standards must be met:

(1) The candidate must attend and successfully complete a minimum of a 16-hour basic COTR course;

(2) The candidate must attend a minimum of 3 hours training specifically in procurement ethics, either through courses offered periodically by the Department, the bureaus, or a commercial vendor; and

(3) The candidate must sign the certification for procurement officials required by the recent Procurement Integrity Act.

(d) *Certification and appointment.* (1) In accordance with bureau procedures, the individual must provide the contracting activity with evidence of completion of the COTR course, procurement ethics training, and with the certification required by the Procurement Integrity Act. Upon determination that the required standards have been met, the chief of the contracting office will issue a one-time Certificate of COTR Appointment.

(2) Once the COTR standards have been met and a Certificate of Appointment has been issued, an individual may be designated and appointed by a contracting officer to serve as a COTR for a particular contract. The individual shall be designated in the contract schedule as the COTR and shall be notified in writing by the contracting officer of the scope and limitations of the COTR's authority as it pertains to the particular contract the individual will administer.

(e) *Limitations.* Each appointment of a COTR made by the contracting officer shall clearly state that the representative is not an authorized contracting officer and does not have the authority under any circumstances to:

(1) Award, agree to award, or execute any contract, contract modification, notice of intent, or other form of binding agreement;

(2) Obligate, in any manner, the payment of money by the Government;

(3) Make a final decision on any contract matter which is subject to the clause at FAR 52.233–1, Disputes; or,

(4) Terminate, suspend, or otherwise interfere with the contractor's right to proceed, or direct any changes in the contractor's performance that are inconsistent with or materially change the contract specifications.

(f) *Termination.* Termination of the COTR's appointment shall be made in writing by the contracting officer and shall give the effective date of the termination. The contracting officer shall promptly modify the contract once a COTR termination notice has been issued. A termination notice is not required when the COTR's appointment terminates upon expiration of the contract.

(g) *Implementation schedule and waivers.* No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the bureau procurement chief may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed

120 days. The waiver may be granted in accordance with bureau procedures.

[56 FR 37860, Aug. 9, 1991, as amended at 60 FR 40109, Aug. 7, 1995]

2801.7001–703 Performance standards.

Supervisors of COTR's are encouraged to include successful contract administration in performance standards for individuals with contract administration responsibility.

PART 2802—DEFINITIONS OF WORDS AND TERMS

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2802.1—Definitions

2802.102 Definitions.

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

(a) *Contracting acitivity* means an office, board, division, or bureau within the Department which has been delegated procurement authority to manage contracting functions associated with its mission or, as is the case with the Office of Justice Programs, which must adhere to the procurement policy of the Attorney General. See 2801. 602 (a), (b)(1) and (b)(2).

(b) *Head of the agency* (also called *agency head*) means the Attorney General, Deputy Attorney General, AAG/A, or their *authorized representative,* which means any person(s) or board (other than the contracting officer) authorized to act for the head of the agency.

(c) *Head of the contracting activity* means those officials identified in 2801.601(a) having responsibility for supervising, managing, and directing the operations of the contracting activities.

(d) *DOJ* means the Department of Justice.

(e) *JAR* means the Department of Justice Acquisition Regulations.

(f) *Bureau procurement chief* means that supervisory official who is directly responsible for supervising, managing and directing all contracting offices of the bureau.

(g) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing and directing the contracting office.

(h) *OBD* means the offices, boards, and divisions within the Justice Department.

(i) *EOUSA* means the Executive Office of United States Attorneys.

(j) *Bureaus* means the procurement components managed by the Justice Department. (See *contracting activity* in this subpart.)

(k) *JMD* means the Justice Management Division.

(l) *USAO* means United States Attorneys' Offices.

(m) *DOJ/PE* means Departmental Procurement Executive.

(n) *BPE* means Bureau Procurement Executive.

[50 FR 4452, Jan. 30, 1985, as amended at 58 FR 68778, Dec. 29, 1993; 60 FR 40109, Aug. 7, 1995]

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2803.1—Safeguards

Sec.
2803.101–3 Agency regulations.
2803.104 Procurement integrity.
2803.104–5 Disclosure, protection, and marking of proprietary and source selection information.
2803.104–9 Certification requirements.
2803.104–11 Processing violations or possible violations.
2803.104–12 Ethics program training requirements.

Subpart 2803.2—Contractor Gratuities To Government Personnel

2803.203 Reporting suspected violations of the Gratuities Clause.
2803.203–70 Agency reporting procedures.

Subpart 2803.4—Contingent Fees

2803.408 Evaluation and review of the SF 119.

Subpart 2803.5—Other Improper Business Practices

2803.502 Subcontractor kickbacks.

Subpart 2803.8—Limitation on the Payment of Funds to Influence Federal Transactions

2803.804 Policy.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4453, Jan. 30, 1985, unless otherwise noted.

Subpart 2803.1—Safeguards

SOURCE: 57 FR 24556, June 10, 1992, unless otherwise noted.

2803.101–3 Agency regulation.

The DOJ regulations governing Standards of Conduct are contained in 28 CFR part 45. Agency authorized exceptions to FAR 3.101–2 are contained in 28 CFR 45.735–14.

2803.104 Procurement integrity.

2803.104–5 Disclosure, protection, and marking of proprietary and source selection information.

(a) The head of the agency, or his or her designee, or the contracting officer are permitted by FAR 3.104–5(d) to authorize persons, or classes of persons, access to proprietary or source selection information when access is necessary to the conduct of the procurement. Authorizations to individuals should be made in writing only after confirmation by the contracting officer that the individual has completed a certification in accordance with FAR 3.104–12(a)(2). Authorizations to classes of persons must be made at a level not lower than the chief of the contracting office.

(b) The head of the office receiving the proprietary or source selection information, or his or her designee, shall maintain a list of persons, or classes of persons, who have authorized access to the information. The list shall be forwarded to the contracting office responsible for the conduct of the procurement to be included in the contract file.

2803.104–9 Certification requirements.

(a) *Record-keeping requirements.* (1) For those contracts over $100,000, the contracting officer's and the contractor's certifications shall be filed in the contract file. Also, the list of personnel having access to source selection information submitted by the program office head will be filed in the contract folder in accordance with FAR 3.104–5.

(2) Bureaus are required to maintain a central file of all certifications required by FAR 3.104–12.

(b) *Exception to certification requirements.* In an exceptional case, the Attorney General may determine in writing that the certification requirement should be waived. The contracting officer, with approval of the Bureau Director, shall submit a request for waiver to the Office of the Procurement Executive. The request shall clearly identify the procurement, or class of procurements, and provide a detailed justification for the requested waiver. The Procurement Executive will evaluate the request, provide recommendations, and forward the request to the Attorney General for his determination. The resulting decision of the Attorney General shall state the reasons for approval or disapproval of the waiver. The Attorney General shall promptly notify Congress, in writing, of each waiver approved. The authority to approve a waiver may not be delegated.

2803.104–11 Processing violations or possible violations.

(a) If any certification received by, or signed by, the contracting officer contains any information of a violation, or possible violation of the procurement integrity section of the OFPP Act, the contracting officer shall determine whether the reported violation, or possible violation has any impact on the pending award, or selection of the source thereof. If the contracting officer concludes that there is no impact, the contracting officer shall report the violation, accompanied by the appropriate documentation supporting that conclusion, to the head of the procurement office. With the concurrence of the head of the procurement office, the contracting officer may immediately proceed with award, and the head of the procurement office shall notify the head of the bureau, or his or her designee, of a violation, or possible violation.

(b) The head of the bureau, or his or her designee, receiving a certification

describing an actual, or possible violation of the procurement integrity provisions of the OFPP Act, shall review all information available and he or she may make a determination that the prohibitions of section 27 of the Act have not been violated. This signed determination will be sent to the contracting officer for inclusion in the contract file.

(c) If the head of the bureau, or his or her designee, determines that the prohibitions of section 27 of the Act have been violated, he/she shall submit the file to the Procurement Executive with an explanation of his/her intentions to remedy the situation. If the Procurement Executive concurs in the intended actions, a written concurrence will be sent to the head of the bureau or designee. The contracting officer will then be advised, or directed by the head of the bureau, or designee, as to the action to be taken. The types of actions that would normally be taken when a violation has occurred that affected the outcome of a procurement are listed in FAR 3.104–11(d).

(d) If the head of the bureau, or his or her designee, receiving the certification of a violation, or possible violation, determines that award is justified by urgent and compelling circumstances, or is otherwise in the interest of the Government, then he or she may authorize the contracting officer to award the contract after notification to the Procurement Executive.

2803.104–12 Ethics program training requirements.

It is the responsibility of the bureaus to provide training for ''procurement officials'' concerning the requirements of FAR 3.104. The bureau procurement training efforts should be coordinated with the Department's Ethics Official, who is responsible for developing agency ethics training plans, to include briefings on ethics and standards of conduct for all employees who are contracting officers and procurement officials. The Ethics Official should be contacted directly to schedule training.

Subpart 2803.2—Contractor Gratuities To Government Personnel

2803.203 Reporting suspected violations of the Gratuities Clause.

2803.203–70 Agency reporting procedures.

(a) DOJ personnel shall report suspected violations of the Gratuities clause (FAR 52.203–3) to the contracting officer or chief of the contracting activity in writing. The report shall clearly state the circumstances surrounding the incident, including the nature of the gratuity, the behavior or action the gratuity was to influence, and the persons involved. The Contracting officer, after review, shall forward the report along with his or her recommendations regarding the treatment of the violation in accordance with FAR 3.204(c) to the head of the contracting activity or his designee.

(b) The head of contracting activity or his designee shall determine whether adverse action against the contractor in accordance with FAR 3.204(c) should be taken. In reaching a decision, the head of the contracting activity or designee shall consult with contracting activities legal advisor or other official in the Department. Prior to taking any action against the contractor the head of the contracting activity or designee shall allow the contractor the opportunity to present opposing arguments in accordance with FAR 3.204.

(c) If the report of the suspected violation alleges that a gratuity was not only offered but also accepted by a Department employee, a copy of the report shall be forwarded by the head of the contracting activity or designee to the DOJ Office of Professional Responsibility (see 28 CFR 0.39).

Subpart 2803.4—Contingent Fees

2803.408 Evaluation and review of the SF 119.

(a) The contracting officer shall review and evaluate the SF 119 and all related information in accordance with FAR 3.408.

(b) The contracting officer's documentation of the evaluation, conclusions, and any proposed actions shall

be reviewed and approved at a level above the contracting officer with the concurrence of the agency's procurement counsel.

Subpart 2803.5—Other Improper Business Practices

2803.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act (41 U.S.C. 51–54) shall be reported by the contracting officer to the contracting activity's procurement counsel who will then advise the contracting officer of appropriate action.

Subpart 2803.8—Limitation on the Payment of Funds to Influence Federal Transactions

2803.804 Policy.

(a) Copies of all contractor disclosures furnished pursuant to the clause at FAR 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, and a summary report, containing a compilation of the information contained in the disclosures received, shall be forwarded, by the Bureau Procurement Chief, to the Procurement Executive. Negative reports are required to be submitted if no disclosures have been received from the contractors.

(b) The disclosures, or negative reports, shall be submitted in accordance with the following schedule:

(1) For the six month period from October 1 to March 31, reports are due to the Procurement Executive by April 30.

(2) For the six month period from April 1 to September 30, reports are due to the Procurement Executive by October 31.

(c) The Procurement Executive shall consolidate the disclosures and reports and submit the semi-annual report and disclosures to the Assistant Attorney General for Administration, for subsequent submission to Congress, on behalf of the Attorney General, by May 31 and November 30 of each year.

[57 FR 24556, June 10, 1992]

PART 2804—ADMINISTRATIVE MATTERS

Subpart 2804.4—Safeguarding Classified Information Within Industry

Sec.
2804.402 General.
2804.403 Responsibilities of contracting officers.

Subpart 2804.6—Contract Reporting

2804.601 Federal Procurement Data System.

Subpart 2804.9—Information Reporting to the Internal Revenue Service

2804.901 Definitions.
2804.903 Procedures.
2804.903–70 Certification.
2804.970 Special reporting exceptions.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4453, Jan. 30, 1985, unless otherwise noted.

Subpart 2804.4—Safeguarding Classified Information Within Industry

2804.402 General.

Classified acquisitions or contracts which require access to classified material, as defined in FAR 4.401, for their performance shall be subject to the policies, procedures, and instructions contained in departmental regulations and shall be processed in a manner consistent with those regulations.

2804.403 Responsibilities of contracting officers.

For proposed solicitations and contracts which may require access to classified material or where guard services are assigned to safeguard departmental activities in possession of classified information, the contracting officer will consult with the COTR and the Director, Security Staff to determine the appropriate security measures to safeguard such material and information.

Subpart 2804.6—Contract Reporting

2804.601 Federal Procurement Data System.

(a) Federal Procurement Data System (FPDS) reports shall be submitted to the Office of the Procurement Executive within thirty days after the close of quarters one through three, and within forty-five days of the close of the fourth quarter in a fiscal year. Specific preparation procedures are contained in the FPDS Reporting Manual and the Product and Service Code Manual.

(b) Bureau Procurement Chiefs shall provide to the Procurement Executive, the name, office, mailing address, and telephone number of the individual who will provide day-to-day operational contact within the bureau for the implementation of the FPDS. Changes and updates shall be forwarded to the Office of the Procurement Executive (OPE) within 30 days after they occur. It is the responsibility of the bureau contacts to ensure that all actions are reported and submitted to the OPE in a timely manner and that all statistics and reports are accurate, current, and complete. Bureau procurement chiefs shall obtain and review a hard copy computer printout of the ACF entries on a periodic basis, for validation purposes.

[50 FR 4453, Jan. 30, 1985, as amended at 50 FR 29799, July 22, 1985; 57 FR 24557, June 10, 1992]

Subpart 2804.9—Information Reporting to the Internal Revenue Service

SOURCE: 55 FR 14094, Apr. 16, 1990, unless otherwise noted.

2804.901 Definitions.

Classified contract, as used in this subpart, means a contract such that the fact of the existence of such contract or the subject matter of such contract has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

Confidential contract, as used in this subpart, means a contract, the reporting of which to the IRS as required under 26 U.S.C. 6050M, would interfere with the effective conduct of a confidential law enforcement activity, such as contracts for sites for undercover operations or contracts with informants, or foreign counterintelligence activity.

2804.903 Procedures.

Bureau procurement offices shall submit their quarterly FPDS reports together with the certification required by section 2804.903–70 to the Procurement Executive in accordance with section 2804.601. The Procurement Executive will certify the consolidated FPDS data for the Department, transmit the data to the Federal Procurement Data Center (FPDC) and authorize the FPDC to make returns to the IRS on behalf of the agency.

2804.903–70 Certification.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR requires the head of every Federal executive agency to file an information return with the IRS for certain contract actions in excess of $25,000 and to certify under penalties of perjury that the information provided is, to the best of his or her belief, true, correct and complete.

(b) The head of the contracting activity or his or her delegate shall certify to the Procurement Executive, in the format specified below, under penalty of perjury, that such official has examined the information submitted by that bureau as its FPDS data, and that the data has been prepared pursuant to the requirements of Section 6050M and that, to the best of such official's knowledge and belief it is compiled from bureau records business for the purpose of making a true, correct and complete return as required by 26 U.S.C. 6050M.

(c) The following certification will be signed and dated by the head of the contracting activity, or his or her delegate, and submitted with each quarterly FPDS report from that bureau.

Certification

I, _____(Name), _____(Title) under the penalties of perjury have examined the information to be submitted by _____(Bureau) to the Procurement Executive, for making information returns on behalf of the Department of Justice to the Internal Revenue Service, and certify that this information has been prepared pursuant to the requirements of section 6050M and that it is to the best of my knowledge and belief, a compilation of bureau records maintained in the normal course of business for the purpose of providing true, correct and complete returns as required by 26 U.S.C. section 6050M.

_____

Signature

_____

Date

[55 FR 14094, Apr. 16, 1990, as amended at 56 FR 26341, June 7, 1991]

2804.970 Special reporting exceptions.

(a) The Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647) amended 26 U.S.C. 6050M to allow exceptions to the reporting requirements for certain classified or confidential contracts.

(b) The head of the agency has determined that the filing of information returns, as required by 26 U.S.C. 6050M, on confidential contracts, which involve law enforcement or foreign counterintelligence activities, would interfere with the effective conduct of those confidential law enforcement or foreign counterintelligence activities, and that the special reporting exceptions added to section 6050M by The Technical and Miscellaneous Revenue Act of 1988 apply to these types of contracts.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2805—PUBLICIZING CONTRACT ACTIONS

Sec.

Subpart 2805.2—Synopses of Proposed Contract Actions

2805.201–70 Departmental notification.

Subpart 2805.3—Synopses of Contract Awards

2805.302–70 Departmental notification.

Subpart 2805.5—Paid Advertisements

2805.502 Authority.
2805.503–70 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2805.2—Synopses of Proposed Contract Actions

2805.201–70 Departmental notification.

(a) A copy of each synopsis of a proposed contract action sent to the Department of Commerce, shall be furnished to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Justice Management Division.

(b) Contracting officers shall document, in the contract file, that a copy of the notice has been forwarded to the OSDBU. A ''cc'' to the OSDBU on the file copy of the CBD notice shall be considered adequate documentation.

[57 FR 24557, June 10, 1992]

Subpart 2805.3—Synopses of Contract Awards

2805.302–70 Departmental notification.

(a) The contracting officer shall forward a copy of the synopsis of contract award, as prepared under FAR 5.302, to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Justice Management Division.

(b) Contracting officers shall document in the contract file that a copy of the notice has been forwarded to the OSDBU. A ''cc'' to the OSDBU on the file copy of the CBD notice shall be considered adequate documentation.

[57 FR 24557, June 10, 1992]

Subpart 2805.5—Paid Advertisements

This subpart provides policies and procedures for the procurement of paid advertising as covered by 5 U.S.C. 302, 44 U.S.C. 3701, 3702, and 3703, and title 7, chapter 5–25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

[50 FR 4455, Jan. 30, 1985]

2805.502 Authority.

(a) Authorization for paid advertising is required for newspapers only. Pursuant to 28 CFR 0.140, the authority to approve publication of paid advertisements in newspapers has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as appropriate.

(b) The authority to approve the publication of advertisements, notices, or proposals pursuant to litigation has been delegated by memorandum by the AAG/A to the heads of the OBDs with the power of redelegation.

(c) Authority to purchase paid advertising must be granted in writing by an official delegated such authority. No advertisement, notice, or proposal will be published prior to receipt of advance written authority for such publication. No voucher for any such advertisement or publication will be paid unless there is presented, with the voucher, a copy of such written authority. Authority shall not be granted retroactively.

[50 FR 4455, Jan.30, 1985, as amended at 60 FR 40109, Aug. 7, 1995]

2805.503–70 Procedures.

(a) Agency officials exercising the authority delegated by 2805.502(a) and (b) shall do so in accordance with the procedures set forth in FAR 5.503 and those set forth below.

(b) Requests for procurement of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

(c) Paid advertisements shall be limited to publication of essential details of invitations for bids and requests for proposals including those for the sale of personal property and for the recruitment of employees.

(d) Optional Form 347, Order for Supplies or Services, or an approved agency form, shall be used for procurement and payment of paid advertising. Procedures for payment of vouchers are contained in title 7, chapter 5–25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

[50 FR 4455, Jan. 30, 1985, as amended at 56 FR 26341, June 7, 1991]

PART 2806—COMPETITION REQUIREMENTS

Subpart 2806.3—Other Than Full and Open Competition

Sec.
2806.302 Circumstances permitting other than full and open competition.
2806.302–7 Public interest.
2806.302–70 Determination and findings.
2806.303–2 Content.
2806.304 Approval of the justification.

Subpart 2806.5—Competition Advocates

2806.501 Requirement.
2806.502 Duties and responsibilities.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(e); 28 CFR 0.75(j) and 0.76(j).

Subpart 2806.3—Other Than Full and Open Competition

2806.302 Circumstances permitting other than full and open competition.

2806.302–7 Public interest.

2806.302–70 Determination and findings.

(a) *Procedure*. The determination and findings (D&F) required by FAR 6.302–7(c)(1) shall be prepared in the format provided in paragraph (b) below. The original and two copies of the D&F and documentation supporting the use of this exception to the requirement for full and open competition shall be submitted to the Office of the Procurement Executive for concurrence and coordination up to the Attorney General for signature.

(b) *Format*. The following format shall be used for the D&F:

Department of Justice, Washington, DC 20530.

Determination and Findings.

Authority To Use Other Than Full and Open Competition

Upon the basis of the following findings and determination, which I hereby make pursuant to the authority of 41 U.S.C. 253(c)(7) as implemented by FAR 6.302–7, it is in the public interest to provide for other than full and open competition in the contract action described below.

FINDINGS

1. The (1) proposes to enter into a contract for the acquisition of (2).

2. Use of the authority cited above is necessary and in the public interest for the following reasons: (3).

DETERMINATION

For the reasons described above, it is necessary and in the public interest to use procedures other than competitive procedures in the proposed acquisition.

Date _____

Notes:

(1) Name of contracting activity.
(2) Brief description of supplies or services.
(3) Explain the need for use of the authority.

[56 FR 26341, June 7, 1991]

2806.303–2 Content.

In addition to the information required by FAR 6.303–2, justifications over $10,000,000 shall contain the following documents:

(a) A written Acquisition Plan as required by FAR 7.102 and DOJ Order 2300.5A. If a plan was not prepared, explain why planning was not feasible or accomplished.

(b) A copy of the CBD announcement or proposed announcement in accordance with the requirements of FAR 5.203.

(c) As part of the description of the supplies or services required in FAR 6.303–2, the justification should include the statement of need as submitted by the requiring activity and any subsequent changes or revisions to the specifications.

(d) Any additional documentation that may be unique to the proposed procurement and is relevant to the justification.

[57 FR 24557, June 10, 1992]

2806.304 Approval of the justification.

(a) All justifications for contract actions over $100,000 shall be submitted to the chief of the contracting activity for concurrence before being forwarded to the procuring activity competition advocate for approval. Justifications over $10,000,000 shall be further submitted for the concurrence of the procuring activity competition advocate and the head of the contracting activity, before being forwarded to the Procurement Executive for approval.

(b) The original and one copy of the justification shall be forwarded to the Office of the Procurement Executive. After approval by the Procurement Executive, the signed original will be returned to the contracting activity and one copy will be retained in the Office of the Procurement Executive.

[57 FR 24557, June 10, 1992, as amended at 58 FR 68778, Dec. 29, 1993]

Subpart 2806.5—Competition Advocates

2806.501 Requirement.

As required by section 20 of the Office of Federal Procurement Policy Act, each executive agency must appoint an agency competition advocate and a competition advocate in each procuring activity of the executive agency. Accordingly:

(a) The competition advocate for DOJ will be located in the Office of the Procurement Executive, Justice Management Division.

(b) The agency head will appoint in each bureau an official to be the procuring activity competition advocate. The procuring agency competition advocates shall be vested with the overall responsibility for competition activities within their respective procuring activity. No individual in the contracting office at or below the level of chief of the contracting office may serve as the procuring activity competition advocate. An individual at any level in the supervisory chain above the chief of the contracting office may serve as procuring activity competition advocate.

[50 FR 29801, July 22, 1985, as amended at 52 FR 42295, Nov. 4, 1987; 53 FR 49666, Dec. 9, 1988; 56 FR 26341, June 7, 1991; 58 FR 68779, Dec. 29, 1993]

2806.502 Duties and responsibilities.

(a) The Procurement Executive shall:

(1) Provide guidance to competition advocates in formulating plans, goals, and procedures to achieve the goals of enhancing competition and challenging barriers to full and open competition; and,

(2) Review and approve justifications for other than full and open competition for contract requirements over $10 million in accordance with JAR 2806.303–2.

(b) The DOJ Competition Advocate is responsible for the duties and responsibilities described in FAR 6.502.

(c) The Procuring Activity Competition Advocate shall:

(1) Actively enforce the Department's Competition Advocacy Program within the procuring activity. Ensure that systems are established for the effective internal control of procuring activity functions and activities which implement the Department's Competition Advocacy Program.

(2) Review specifications for unnecessary detail and statements of need for undue restrictions which have not been successfully tested in the marketplace. Should the procuring activity competition advocate challenge that the specifications are not conducive to full and open competition or that the statement of need is unduly restrictive, corrective action shall be taken as the chief of the contracting office determines necessary.

(3) Review and approve justifications for other than full and open competition for contract requirements over $100,000 but not exceeding $1 million. Justifications submitted to the procuring activity competition advocate shall

be prepared pursuant to FAR 6.303 and shall contain the concurrence of the chief of the contracting office before being forwarded to the competition advocate.

(4) Concur with justifications for other than full and open competition for contract requirements over $1 million but not exceeding $10 million which require the review and approval by the head of the contracting activity or designee. Such justifications shall be prepared pursuant to FAR 6.303 and the JAR 2806.303–2. In addition to obtaining the concurrence of the procuring activity competition advocate, the concurrence of the chief of the contracting office shall also be obtained before being forwarded for higher level review and approval.

(5) Identify and challenge barriers to full and open competition.

(6) Implement specific goals and objectives to enhance competition.

(7) Prepare and submit to the DOJ Competition Advocate, by November 30th of each year, an annual report of competition advocacy activities conducted during the prior fiscal year.

[58 FR 68779, Dec. 29, 1993]

PART 2807—ACQUISITION PLANNING

Subpart 2807.1—Acquisition Plans

Sec.
2807.102 Policy.
2807.103 Agency-head responsibilities.

Subpart 2807.70—End-of-Year Procurements

2807.7001 Lead times and cut-off dates.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4455, Jan. 30, 1985, unless otherwise noted.

Subpart 2807.1—Acquisition Plans

2807.102 Policy.

(a) In accordance with the Office of Federal Procurement Policy, Policy Letter 81–1, Executive Order 12352, and in compliance with FAR 7.102, procurement activities of DOJ shall coordinate planning of resource utilization in conducting procurement programs. Such planning shall accomplish the following objectives:

(1) Provide for early planning of procurement actions to allow ample time for conducting competitive solicitations and to avoid unnecessary urgent requirements that generally restrict competition.

(2) Provide for a more even flow of procurement requests to procurement operations throughout a fiscal year, better using personnel resources and avoiding wasteful and hasty year-end spending.

(3) Identify identical or like requirements that can be combined under one solicitation, thereby saving manpower resources and financial resources through quantity discounts.

(b) Acquisition planning shall be accomplished in accordance with the Department's Advance Procurement Planning Program Order. Approval for alterations of programs or DOJ forms must be obtained from the Office of the Procurement Executive.

[50 FR 4455, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985; 58 FR 68779, Dec. 29, 1993]

2807.103 Agency-head responsibilities.

(a) The Department's Advance Procurement Planning Program Order provides that heads of components (Offices, Boards, Divisions and Bureaus) shall appoint an acquisition planner for all programs and activities requiring contract actions estimated at $500,000 or more in any given contract year. Acquisition planners shall be responsible for developing and maintaining written advance procurement plans. The acquisition planner shall work with the component procurement representative in developing advance procurement plans.

(b) The heads of the contracting activities shall ensure that, during the acquisition planning phase, requirements personnel consider the use of the metric system of measurement consistent with 15 U.S.C. 2205 et seq. Use of the metric system must be coordinated with the contracting office and be consistent with security, operational, economic, technical, training, and safety requirements.

[57 FR 24558, June 10, 1992, as amended at 58 FR 68779, Dec. 29, 1993]

Subpart 2807.70—End-of-Year Procurements

2807.7001 Lead times and cut-off dates.

(a) DOJ procurement activities shall establish lead times and cut-off dates for acceptance and processing of procurement requests that require use of expiring current year funds. Procedures implemented by the procurement activities shall include:

(1) Lead times required to process procurement requests according to the method of contracting (sealed bid or competitive proposals, etc.) and type of action (new award, modification, or option). Procurement activities may further refine the lead times in accordance with their experience and types of requirements;

(2) Firm cut-off dates beyond which a procurement request will not be accepted if the requirement is to use expiring current year funds. Cut-off dates will be issued consistent with the lead times established in paragraph (a)(1) of this section; and

(3) A statement that failure to submit a requisition prior to the cut-off date applicable to processing a fully competitive procurement does not, in itself, establish justification for contracting by other than full and open competition.

(b) Fourth quarter procurements.

(1) Instructions provided to Federal agencies by the Office of Management and Budget state that fourth quarter obligations should not exceed the average obligations for the first three quarters, except where seasonal requirements, essential program objectives, or lead times justify a higher level. Excessive and wasteful year-end spending can be prevented by firmly enforcing the procurement cut-off dates, the Department's Advance Procurement Planning Program Order, reviewing questioned procurements with procurement supervisors and appropriate program personnel and giving particular attention to fourth quarter procurement requests in areas that are particularly vulnerable to wasteful spending. In addition, chiefs of the contracting offices shall ensure that their staffs are aware of OFPP Policy Letter 81–1 and the OFPP checklist for use in detecting and preventing wasteful year-end spending.

[52 FR 4320, Feb. 11, 1987, as amended at 58 FR 68779, Dec. 29, 1993]

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 2808.4—Ordering From Federal Supply Schedules (FSS)

Sec.
2808.400–70 Renewals of purchase orders issued under Federal Supply Schedules.
2808.401–70 Use of General Services Administration (GSA) Self-Service Stores.

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802–70 Procedure.

Subpart 2808.11—Leasing of Motor Vehicles

2808.1102–70 Procedure.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4456, Jan. 30, 1985, unless otherwise noted.

Subpart 2808.4—Ordering From Federal Supply Schedules (FSS)

2808.400–70 Renewals of purchase orders issued under Federal Supply Schedues.

(a) To expedite renewals of purchase orders issued against FSS contracts OBD's and the EOUSA are encouraged to submit annually only one requisition which would cover all renewals for a given vendor's GSA schedule contract.

(b) In preparing renewals, consolidate items of identical make and model number, indicate aggreate quantity, and segregate as to lease renewals and maintenance renewals for DOJ equipment. Systems are not to be aggregated, but should be listed as a separate line item on the requisition and shall not be split.

2808.401–70 Use of General Services Administration (GSA) Self-Service Stores.

Policy and procedures for the use of the GSA self-service stores are contained in departmental orders.

Subpart 2808.8—Acquisition of Printing and Related Supplies

2808.802–70 Procedure.

Contracting officers shall obtain written approval from the Director, General Services Staff. JMD (the central printing authority designated to serve as liaison between the Department and the Joint Committee on Printing) before acquiring any of the items defined in FAR 8.801.

[50 FR 4456, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

Subpart 2808.11—Leasing of Motor Vehicles

2808.1102–70 Procedure.

Prior to preparing solicitations for the leasing of motor vehicles, contracting officers shall ensure that the requisition for such lease has been reviewed and approved by the General Services Staff, Justice Management Division.

[50 FR 4456, Jan 30, 1985, as amended at 52 FR 34390, Sept. 11, 1987]

PART 2809—CONTRACTOR QUALIFICATIONS

Subpart 2809.4—Debarment, Suspension, and Ineligibility

Sec.
2809.401 Applicability.
2809.402 Policy.
2809.405 Effects of listing.
2809.405–1 Continuation of current contracts.
2809.470 Responsibilities.

Subpart 2809.5—Organizational Conflicts of Interest

2809.503 Waiver.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4456, Jan. 30, 1985, unless otherwise noted.

Subpart 2809.4—Debarment, Suspension, and Ineligibility

2809.401 Applicability.

This subpart is applicable to all contracting activities in the offices, boards, divisions, and bureaus (OBDBs) of DOJ and for contracts involving personal property and non-personal services including construction and leases of real property. This subpart does not apply to grants or other forms of Federal assistance.

2809.402 Policy.

Debarment and suspension actions are a means to ensure that agencies contract only with responsible business concerns and individuals. Contracting activities shall:

(a) Consider debarment or suspension of a contractor when cause is shown as listed under FAR 9.406–2 (debarment) and FAR 9.407–2 (suspension).

(b) Consult the GSA Consolidated List of Debarred, Suspended, or Ineligible Contractors prior to soliciting offers from, awarding contracts to, renewing or extending contracts, or consenting to subcontracts with contractors on the GSA Consolidated List. Exceptions will be granted only for compelling reasons and in accordance with FAR 9.405(a).

2809.405 Effects of listing.

2809.405–1 Continuation of current contracts.

In accordance with FAR 9.405–1, contracting activities may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred unless it is determined that termination of the contract is in the best interest of the Government. In making this determination contracting activities shall consider the seriousness of the act or omission leading to the debarment or suspension, the effect of debarment or suspension on the contractor's ability to continue operations, and the Department's ability to safeguard its interests and receive satisfactory performance and for compelling reasons and in accordance with FAR 9.405(a).

2809.470 Responsibilities.

(a) Contracting activities in the OBDBs shall:

(1) Be familiar with the policies and procedures concerning debarment, suspension, and ineligibility as set forth in FAR subpart 9.4 and this subpart.

(2) Provide an effective system within their activity to ensure that contracting staff consult the GSA Consolidated List of Debarred, Suspended, or Ineligible Contractors prior to soliciting offers from, awarding or extending contracts to, or consenting to subcontracts with contractors on the list.

(3) Consider recommending debarment or suspension of a contractor when cause exists under FAR 9.406–2 (debarment) and FAR 9.407–2 (suspension). Existence of cause for debarment or suspension does not necessarily require that the contractor be debarred or suspended. Contracting activities must consider the seriousness of the contractor's acts or omissions and any mitigating circumstances. Contracting staffs should consult with their appropriate legal counsel prior to making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination should be subject to reconsiderations if new information or additional fact-finding so justifies.

(4) Immediately prepare a notice in accordance with FAR 9.406–3(a) (debarment) or FAR 9.407–3(c) (suspension) if a decision is made to initiate debarment and/or suspension of a contractor. The draft notice along with the administrative file containing all relevant facts and analysis shall be forwarded to the Procurement Executive, as the debarring and suspending official, following review by the activity's legal counsel and procurement head.

(b) The DOJ Procurement Executive, as the debarring and suspending official, shall:

(1) Review the notice and administrative file for sufficiency and provide for review by other DOJ officials as considered appropriate.

(2) Give the contractor prompt notice of the proposed debarment or suspension if he or she so decides, in accordance with FAR 9.406–3(c) (debarment) or FAR 9.407–3(c) (suspension).

(3) Direct additional fact-finding as necessary when material facts are in dispute. Fact-finding over disputed issues of fact in debarment and suspension proceedings may be conducted by the General Services Administration Board of Contract Appeals (GSBCA) in accordance with the signed agreement between the Department and GSBCA if requested by either the government or the contractor.

(4) Notify the contractor of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406–3(c) (debarment) and FAR 9.407–3(c) (suspension).

(c) Other responsibilities of the DOJ Procurement Executive.

(1) Provide notification to GSA within five working days after debarring or suspending a contractor or modifying or rescinding such an action of the information set forth in FAR 9.404(c).

(2) Maintain agencywide records of debarred or suspended contractors in accordance with FAR 9.404(c)(4).

(3) In accordance with FAR 9.405(a), approve determinations submitted by contracting activities establishing compelling reasons to contract or consent to a subcontractor with a contractor on a current debarred or suspended list. (DOJ officials do not have the authority to make exceptions for contractors declared ineligible.)

(4) Provide interim notification to the OBDBs of contractors debarred or suspended pending inclusion into the GSA Consolidated List and coordinate among the OBDBs annual subscriptions to the GSA list.

[50 FR 4456, Jan. 30, 1985, as amended at 52 FR 34390, Sept. 11, 1987]

Subpart 2809.5—Organizational Conflicts of Interest

2809.503 Waiver.

(a) Waiver authority granted under FAR 9.503 is delegated by this subpart to the DOJ officials listed in 2801.601(a). This authority may not be redelegated.

(b) Requests for waivers shall be prepared by the contracting officer and shall include the following:

(1) A complete description of the organizational conflict;

(2) A discussion of why the conflict cannot be avoided, neutralized, or mitigated in accordance with the procedures in FAR 9.507;

(3) The benefits to the Government and to the contractor in approving the waiver; and,

(4) The potential or actual negative or detrimental effects of approving the waiver.

PART 2810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
2810.001 Definitions.
2810.002 Metric Policy.
2810.004–70 ''Brand name of equal'' purchase description.
2810.007 Deviations.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4457, Jan. 30, 1985, unless otherwise noted.

2810.001 Definitions.

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

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

Metric system means the International System of Units established by the General Conference of Weights and Measures in 1960.

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

[57 FR 24558, June 10, 1992]

2810.002 Metric Policy.

Consistent with the policy expressed in FAR 10.002(c), solicitations must include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. Whenever possible, commercially developed metric specifications and internationally, or domestically developed voluntary standards, using metric measurements, must be adopted. While an industry is in transition to metric specifications, solicitations must include specifications and purchase descriptions stated in soft metric, hybrid, or dual systems except when impractical or inefficient.

[57 FR 24558, June 10, 1992]

2810.004–70 "Brand name or equal" purchase description.

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

(1) When a suitable formal Government specification, standard, or industry standard approved for agency use is not available and a purchase description meeting the general requirements of FAR 10.004 cannot be prepared because:

(i) Construction or composition of the product to be procured is too technically involved;

(ii) Public exigency precludes timely development; or,

(iii) It is impractical or uneconomical to prepare a purchase description.

(2) When purchasing items for authorized resale.

(b) The term ''brand name product'' means a commercial product described by a brand name and make or model number or other appropriate nomenclature by which that product is offered for sale to the public by the particular manufacturer, producer, or distributor. When using a ''brand name or equal'' purchase description all known acceptable brand name products should be listed in the solicitation. When a ''brand name or equal'' purchase description is used to describe a primary item or major component, prospective offerors must be given the opportunity to offer products other than those specifically referenced by brand name, if those other products will meet the needs of the Government in essentially the same manner as those referenced as brand name in the solicitation. If modifications to standard products are anticipated to meet the purchase description requirements, a minimum of 30 calendar days shall be allowed between the issuance of the solicitation and the opening of bids or receipt of proposals, provided that periods of less than 30

calendar days may be set only in cases where one of the statutory exceptions to publicizing the procurement in the *Commerce Business Daily* applies and when the contracting officer has reason to believe that bidders can bid effectively on the basis of a shorter period.

(c) ''Brand name or equal'' purchase descriptions should set forth those salient physical, functional, or other characteristics of the products referenced as brand name which are essential to the Government, and should contain the following information to the extent available, and include such other information as is necessary to describe the item required:

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

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

(3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if possible).

(d) In ''brand name or equal'' solicitations the product referenced as ''brand name'' must be regularly offered for sale to the public.

(e) When a ''brand name or equal'' purchase description is used the contracting officer shall note in the contract file the reasons for using this purchase description.

(f)(1) When a ''brand name or equal'' purchase description is used in a solicitation, except for component parts or accessories of an end item for which the contracting officer determined that the application of the following clause would be impractical, the following clause shall be inserted after each item so described in the solicitation for completion by the offeror.

Bidding On:
Manufacturer's Name: _____
Brand: _____
No.: _____

(2) In addition, the clause set forth in section 2852.210–70 entitled ''Brand Name or Equal'' shall be inserted into all solicitations for which this type of purchase description is used.

2810.007 Deviations.

Heads of contracting activities are authorized to approve deviations and exceptions to specifications or standards listed in the Index of Federal Specifications and Standards when the exceptions listed in FAR 10.006 do not apply, in accordance with the reporting and other requirements of FAR 10.007. The Office of the Procurement Executive shall be notified, in writing, within 30 days of the approval of each deviation or exception approved.

[50 FR 4457, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

PART 2812—CONTRACT DELIVERY OR PERFORMANCE

Subpart 2812.1—Extension of Delivery or Performance Schedules

Sec.
2812.170 Policy.

Subpart 2812.2—Liquidated Damages

2812.270 Procedure.

Subpart 2812.3—Priorities and Allocations

2812.303 Procedures.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4458, Jan. 30, 1985, unless otherwise noted.

Subpart 2812.1—Extension of Delivery or Performance Schedules

2812.170 Policy.

It is the policy of DOJ to ensure that contract delivery schedules are reasonable, realistic and meet the requirements of the acquisition. However, in some instances when the contractor fails to deliver in a timely manner, it may be necessary for the Government to allow the contractor to continue performance. Under these circumstances, if the delay is caused by conditions which would not be considered ''excusable delays'' (as defined in FAR clause 52.249–14, Excusable Delays) the contracting officer should secure consideration for the Government's forbearance in extending the delivery schedule.

[60 FR 40109, Aug. 7, 1995]

Subpart 2812.2—Liquidated Damages

2812.270 Procedure.

In the event it is desirable to make a remission of liquidated damages, assessed against a contractor for delayed performance, the contracting officer shall prepare a memorandum for the signature of the AAG/A and subsequent transmittal to the Comptroller General, which sets forth the rationale for the proposed remission of liquidated damages together with all pertinent background data upon which the recommendation that such damages be remitted to the contractor. This memorandum must be coordinated with the JMD Office of General Counsel prior to forwarding to the AAG/A for signature.

Subpart 2812.3—Priorities and Allocations

2812.303 Procedures

(a) The Procurement Executive, in accordance with paragraph 1.e., of the Procurement Executive Charter, issued with Attorney General Order 1085–85, is the agency official delegated authority to exercise priority authority on behalf of the Department. Any request for a priority rating on a contract or order must be submitted to the Office of the Procurement Executive in accordance with the procedures in this subpart.

(1) The requesting activity shall submit to the Procurement Executive a description of the supplies or services requiring a priority rating and a complete justification for the necessity of a rated order including the method and type of contract and the anticipated award date. The justification must also state the level of priority rating requested and comply with the requirements of the Defense Priorities and Allocations System (OPAS) (15 CFR part 350).

(2) Upon receipt the Office of the Procurement Executive shall review the request for completeness and establish appropriate liaison with the Department of Commerce (DOC), the administering agency. Depending on the nature of the requirement, the OPE may schedule a meeting with DOC officials to present the proposal. In such cases, a representative from the requiring activity may be requested to attend.

(3) DOJ activities requesting rated orders that concern classified material shall call the Procurement Executive before submitting their request to ensure appropriate transmission and handling between the requesting activity and the Office of the Procurement Executive.

[52 FR 4320, Feb. 11, 1987]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2813.4—Imprest Fund

Sec.
2813.403–80 Agency responsibilities.
2813.404–70 Conditions for use.

Subpart 2813.5—Purchase Orders

2813.505 Purchase order and related forms.
2813.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
2813.505–370 Standard Form 44.

Subpart 2813.70—Certified Invoice Procedure

2813.7001 Policy.
2813.7002 Procedure.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4458, Jan. 30, 1985, unless otherwise noted.

Subpart 2813.4—Imprest Fund

2813.403–80 Agency responsibilities.

Regulations governing the operation and procedures of the imprest fund for the OBDs are contained in OBD internal regulations and Accounting Operations Instructions. Individuals delegated the authority to withdraw from the imprest fund are further subject to the limitations contained in their delegation memorandum.

2813.404–70 Conditions for use.

The Department of the Treasury has approved for OBDBs limitations on transactions of varying amounts depending on needs. These limitations are maintained in OBDB internal regulations and procedures.

Subpart 2813.5—Purchase Orders

2813.505 Purchase order and related forms.

2813.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

The JMD Form 422 is authorized for use in the OBDs as a substitute for Optional Form 347. Bureaus may prescribe an equivalent form to meet their needs subject to the approval of the head of the procuring activity and in accordance with FAR 13.505–2 and FAR 13.507, Clauses.

2813.505–370 Standard Form 44.

(a) Purchasing offices using the SF 44 will be responsible for instructing authorized users as to the limitations and procedures for use of the SF 44 as outlined in FAR 13.505–3.

(b) Since the SF 44 is an accountable form, a record shall be maintained of: serial numbers of the forms; to whom issued; and, the date issued. SF 44's shall be kept securely under lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of the SF 44.

Subpart 2813.70—Certified Invoice Procedure

SOURCE: 57 FR 24558, June 10, 1992, unless otherwise noted.

2813.7001 Policy.

Under limited circumstances as described in this subpart, supplies or services directly related to mission accomplishment, may be acquired on the open market from local suppliers at the site of the work or use point, using vendor's invoices under the certified invoice procedure, instead of issuing purchase orders. Certified invoice procedures may not be used to place orders under established contracts, unless, specific authorization for their use is included in the contract document.

2813.7002 Procedure.

(a) Purchases utilizing the certified invoice procedure shall be effected only in accordance with FAR part 13 and JAR 2813, subject to the following:

(1) The amount of any one purchase does not exceed 10 percent of the small purchase limitation;

(2) A purchase order is not required by either the supplier or the Government;

(3) Appropriate invoices can be obtained from the supplier; and

(4) The items to be purchased shall be domestic source end products, except as provided in FAR subpart 25.1.

(b) Use of the certified invoice procedures does not eliminate the requirements in FAR part 13 or JAR part 2813 to:

(1) Reserve small purchases for small business in accordance with the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, et seq.), or document the file as to why a small business was not selected;

(2) Certify that the quality and quantity of item/services furnished are in accordance with the verbal agreement made with the vendor; and

(3) Obtain competitive quotes as is reasonable for the item being purchased.

(c) The Chief of the Contracting Office, as defined in (JAR) 48 CFR 2802.102(g), shall delegate the authority to the use the certified invoice procedure. Each delegation must specify any limitation placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

(d) Each individual using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished. Upon receiving the invoice, the individual making the purchase shall annotate the invoice with the date of receipt, verify the arithmetic accuracy of the invoiced amount and verify on the invoice that the supplies and/or services have been received and accepted. If the invoice is correct, the individual making the purchase shall sign the invoice indicating acceptance and immediately forward it to his/her Executive Office. The invoice shall be approved by his/her appropriate administrative office and be forwarded to the Finance Office for payment within 5 workdays after receipt of the invoice, or acceptance of supplies or services, whichever is later. Before forwarding the invoice to Finance, the administrative office shall place the following statement on the invoice, along with the accounting and appropriation data:

I certify that these goods and/or services were received on _____ (date) and accepted on _____ (date). Oral purchase was authorized and no confirming order has been issued.

Signature

Date

Printed or Typed Name and Title

[57 FR 24558, June 10, 1992, as amended at 60 FR 40110, Aug. 7, 1995]

PART 2814—SEALED BIDDING

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2814.4—Opening of Bids and Award of Contract

2814.406–370 Other mistakes disclosed before award.

(a) The authority to make determinations under paragraphs (a), (b), (c), and (d) of FAR Subsection 14.406–3 is delegated to those individuals listed in subpart 2801.6, Contracting Authority and Responsibility, section 2801.601. Such authority may be redelegated in accordance with FAR 14.406–3(e).

(b) Copies of all records, documentation, and determinations made with respect to mistakes in bids shall be kept in the contract file to which they pertain.

(c) The following procedures shall be followed when submitting doubtful cases of mistakes in bids to the Comptroller General for an advance decision.

(1) Requests for advance decisions submitted to the Comptroller General in cases of mistakes in bids shall be made by those individuals in paragraph (a) of this section with the authority to make determinations under this subpart.

(2) Requests for advance decisions shall be in writing, dated, signed by the requestor, addressed to the Comptroller General of the United States, General Accounting Office, Washington, DC 20548, and contain the following:

(i) The name and address of the party requesting the decision;

(ii) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the requesting party's position with respect to the question; and,

(iii) Copies of all pertinent records and supporting documentation.

[50 FR 4459, Jan. 30, 1985]

PART 2815—CONTRACTING BY NEGOTIATION

Subpart 2815.4—Solicitation and Receipt of Proposals and Quotations

Sec.
2815.405 Solicitations for informational and planning purposes.
2815.408 Issuing solicitations.
2815.411 Receipt of proposals and quotations.

Subpart 2815.5—Unsolicited Proposals

2815.506 Agency procedures.

Supbart 2815.8—Price Negotiation

2815.803–70 General.
2815.804–370 Waiver of submission of certified cost or pricing data.
2815.805–570 Field pricing support.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4459, Jan. 30, 1985, unless otherwise noted.

Subpart 2815.4—Solicitation and Receipt of Proposals and Quotations

2815.405 Solicitations for informational and planning purposes.

When a solicitation for informational or planning purposes is to be issued, the contracting officer shall make a written determination that such solicitation is justified. This determination shall be approved at one level above the contracting officer.

[60 FR 40110, Aug. 7, 1995]

2815.408 Issuing solicitations.

Solicitations involving classified information shall be handled in accordance with the policies and procedures contained in departmental and other OBDB prescribed policies and regulations that supplement Departmental regulations. Such supplemental regulations must have the prior approval of the AAG/A before implementation in accordance with the Departmental regulations.

(Approved by the Office of Management and Budget under control number 1105–0028)

2815.411 Receipt of proposals and quotations.

Classified proposals and quotations shall be handled in accordance with agency regulations and any supplemental directives or orders implemented by the OBDBs.

Subpart 2815.5—Unsolicited Proposals

2815.506 Agency procedures.

(a) Each contracting activity of the Department as defined in 2802.1(a) shall designate a point of contact for the receipt and handling of unsolicited proposals. Generally, the official designated shall be the chief of the contracting office as defined in 2802.1(f) or immediate subordinate.

(b) The following points of contact have been designated:

(1) For the OBDs—The Assistant Director, Procurement Service, PCS.

(c) The designated point of contact for each contracting activity shall provide for and coordinate receipt, review, evaluation, and final disposition of unsolicited proposals in accordance with FAR 15.506 through 15.509.

(d) The contracting officer shall advise the members of the evaluation committee of the Standards of Conduct contained in 28 CFR part 45. Each member of the evaluation committee shall certify in writing that he/she has no apparent or actual conflict of interest. Committee members who become aware of a conflict of interest during the course of the proceedings shall report such conflicts, whether real or apparent, to the contracting officer immediately following such awareness.

The contracting officer shall take immediate action to dismiss the committee member and appoint a replacement. If the contracting officer determines that dismissal is not necessary, such determination shall be made in writing and approved by the head of the contracting activity.

Subpart 2815.8—Price Negotiation

2815.803–70 General.

In a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions to negotiate a reasonable price or profit or fee without success, the contracting officer shall then refer the contract action to the Office of the Procurement Executive for the OBD's, or to the appropriate official for their agency listed in 2801.601(a) or their designee in accordance with bureau procedures.

[50 FR 4459, Jan. 30, 1985, as amended at 50 FR 29801, July 22, 1985]

2815.804–370 Waiver of submission of certified cost or pricing data.

In exceptional cases, the requirement for submission of certified cost or pricing data may be waived. The authorization to waive the requirement shall be in writing and shall set forth the relevant circumstances, including the reasons for granting the waiver and the contracting officer's recommendation. The waiver shall be approved by the appropriate bureau official listed in 2801.601(a) or his/her designee in accordance with bureau procedures.

[60 FR 40110, Aug. 7, 1995]

2815.805–570 Field pricing support.

Field pricing support is available to the Department components through the Office of Inspector General. All requests for audit assistance shall be directed to the Assistant Inspector General for Audits, Suite 701, 4 Skyline Place, 5113 Leesburg Pike, Falls Church, VA 22041.

[56 FR 26341, June 7, 1991]

PART 2816—TYPES OF CONTRACTS

Sec.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time–and–materials contracts.
2816.602 Labor–hour contracts.
2816.603 Letter contracts.
2816.603–270 Application.
2816.603–370 Limitations.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

2816.601 Time-and-materials contracts.

A time-and-materials type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a time-and-materials type contract will be made at a level above the contracting officer.

[60 FR 40110, Aug. 7, 1995]

2816.602 Labor-hour contracts.

A labor-hour type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a labor-hour type contract will be made at a level above the contracting officer.

[60 FR 40110, Aug. 7, 1995]

2816.603 Letter contracts.

2816.603–270 Application.

In cases where the contracting officer and the contractor cannot negotiate the definitization of a letter contract within 180 days after the date of the letter contract, or before completion of 40 percent of the work to be performed, the contracting officer may, with the written approval of the head of the contracting activity, revise and extend the definitization schedule. However, in no event shall the extension of the definitization schedule extend beyond

the lesser of: An additional 180 day period or the completion of 80 percent of the work to be performed. If at the end of the extension the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach an agreement on price or fee, the procedures set forth in FAR 52.216–25, FAR 16.603–2, 15.8, and Part 31 shall be followed as applicable.

[50 FR 4461, Jan. 30, 1985]

2816.603–370 Limitations.

Copies of all approved determinations authorizing the use of letter contracts shall be provided to the Procurement Executive.

[60 FR 40110, Aug. 7, 1995]

PART 2817—SPECIAL CONTRACTING METHODS

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2817.5—Interagency Acquisitions Under the Economy Act

2817.502–70 General.

For the purposes of FAR 17.502, the head of the requesting agency responsible for making the required written determination shall be the individuals listed in 2801.601(a) or their designee.

[50 FR 4462, Jan. 30, 1985]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2819—SMALL AND DISADVANTAGED BUSINESS CONCERNS

Subpart 2819.2—Policies

Sec.
2819.201 General policy.

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

Subpart 2819.70—Forecasts of Expected Contract Opportunities

2819.701 General.
2819.702 Procedures.

AUTHORITY: 28 U.S.C. 509 and 510; 15 U.S.C. 644(k); 28 CFR 0.18(a)(4).

Subpart 2819.2—Policies

2819.201 General policy.

(a) The Office of Small and Disadvantaged Business Utilization is organizationally attached to the Office of the Deputy Attorney General in accordance with 28 CFR 0.18(a).

(b) The Director, Office of Small and Disadvantaged Business Utilization is responsible for the administration of the DOJ small and disadvantaged business programs in accordance with the duties described in 28 CFR 0.18(a).

[50 FR 4462, Jan. 30, 1985]

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

Before a contracting officer may withdrawn or modify a small business set-aside, the contracting officer shall seek the concurrence of the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). If the contracting officer and the Director, OSDBU, are unable to agree on the proposed withdrawal or modification, the Director, OSDBU shall forward the matter to the Deputy Attorney General for resolution.

[54 FR 40878, Oct. 4, 1989]

Subpart 2819.70—Forecasts of Expected Contract Opportunities

2819.701 General.

Section 501 of Public Law 100–656 the Business Opportunity Development Reform Act of 1988 requires executive agencies having contract actions in excess of $50 million in Fiscal Year 1988 or later to prepare an annual forecast of expected contract opportunities, or classes of contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing.

[56 FR 26341, June 7, 1991]

2819.702 Procedures.

The content and format of bureau annual forecasts of contract opportunities, as well as the updates to their contracting forecasts shall be as specified by the Director, OSDBU. Updates should be prepared and submitted at the same time the bureaus prepare their semiannual reviews of their advance procurement plans, in April and October.

[56 FR 26341, June 7, 1991]

PART 2822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2822.1—Basic Labor Policies

2822.103–4 Overtime approvals.

The inclusion of a dollar amount greater than zero in paragraph (a) of the FAR clause 52.222–2, Payment for overtime premiums, must be approved at a level above the contracting officer. Such approval shall be signified by the signature of the approving official on

the contracting officer's written determination made in accordance with FAR 22.103–4.

[50 FR 4462, Jan. 30, 1985]

PART 2824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 28 U.S.C. 510; 5 U.S.C. 301, 552.

2824.202 Policy.

Procedures for processing FOIA/PA requests for JMD records are set forth in departmental regulations and 28 CFR part 16.

[50 FR 4462, Jan. 30, 1985]

PART 2825—FOREIGN ACQUISITIONS

Subpart 2825.1—Buy American Act—Supplies

Sec.
2825.102–70 Policy.
2825.105–70 Evaluating offers.
2825.108–70 Excepted articles, materials, and supplies.

Subpart 2825.2—Buy American Act—Construction Materials

2825.202–70 Policy.
2825.203–70 Evaluating offers.

Subpart 2825.3—Balance of Payments Program

2825.302–70 Policy.

Subpart 2825.9—Omission of the Examination of Records Clause

2825.903–70 Conditions for omission.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c), 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4462, Jan. 30, 1985, unless otherwise noted.

Subpart 2825.1—Buy American Act—Supplies

2825.102–70 Policy.

(a) The agency officials authorized to make determinations under FAR 25.102(a)(3) that domestic preference would be inconsistent with the public interest are those individuals listed in 2801.601(a). Determinations made under this authority shall cite the rationale supporting the decision not to apply the domestic preference criteria and shall be reviewed and concurred in by the contracting activity's procurement counsel prior to approval by the appropriate agency official.

(b) The agency officials authorized to make determinations under FAR 25.102(a)(4) are the officials referenced in paragraph (a) of this section or their designees. Determinations made under this subpart shall cite the rationale supporting the determination and shall be reviewed and concurred in by the contracting activity's procurement counsel prior to approval by the appropriate agency official.

2825.105–70 Evaluating offers.

The agency officials authorized to make a determination that the offered price of a domestic end product is unreasonable when the lowest priced acceptable domestic offer exceeds the lowest priced acceptable foreign offer inclusive of duty when the factors set forth in FAR 25.105 have been applied, are those officials listed in 2801.601(a).

2825.108–70 Excepted articles, materials, and supplies.

The agency officials cited in 2825.102–70(b) and 2825.202–70(b) who are responsible for making the determinations authorized under those sections shall be responsible for providing the notification of excepted articles, materials, and supplies required by FAR 25.108(b) and (c).

Subpart 2825.2—Buy American Act—Construction Materials

2825.202–70 Policy.

(a) The agency officials authorized to make determinations under FAR 25.202(a)(2) that the use of a particular construction material would be impracticable are those individuals listed in 2801.601(a). Determinations made under this authority shall cite the rationale supporting the determination and shall be reviewed and concurred in by the contracting activity's procurement counsel prior to approval by the appropriate agency official.

(b) The agency officials authorized to make determinations under FAR

25.202(a)(3) are the officials referenced in paragraph (a) of this section or their designees. Determinations made under this subpart shall cite the rationale supporting the determination and shall be reviewed and concurred in by the agency's procurement counsel prior to approval by the appropriate agency official.

2825.203–70 Evaluating offers.

The agency officials authorized to make a determination that using a particular domestic construction material would unreasonably increase the cost of the acquisition or would be impracticable are those officials listed in 2801.601(a).

Subpart 2825.3—Balance of Payments Program

2825.302–70 Policy.

The agency officials authorized to make determinations under FAR 25.302(b)(3), as well as authorize the use of a differential greater than 50 percent for the evaluation of domestic and foreign offers under the Balance of Payments Program, are those officials listed in 2801.601(a) or their designees. All determinations made under this part shall be in writing and shall set forth the facts and circumstances supporting the determination. Determinations shall be reviewed and concurred in by the contracting activity's procurement counsel. Authorizations to use a differential greater than 50 percent for the evaluation of domestic and foreign offers under the Balance of Payments Program (ref. FAR 25.302(c) and 25.303(b)) shall also require a written determination.

Subpart 2825.9—Omission of the Examination of Records Clause

2825.903–70 Conditions for omission.

The agency officials authorized to make determinations under FAR 25.903(a)(1) are those individuals listed in 2801.601(a). All determinations made under this authority shall conform to FAR 25.904 and be reviewed and concurred in by the contracting activity's procurement counsel prior to being approved by the authorized agency official.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2828—BONDS AND INSURANCE

Sec.
2828.000 Scope of part.

Subpart 2828.1—Bonds

2828.106–270 Substitution of surety bonds.

Subpart 2828.2—Sureties

2828.203 Options in lieu of sureties.

Subpart 2828.3—Insurance

2828.307 Group insurance plans.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4463, Jan. 30, 1985, unless otherwise noted.

2828.000 Scope of part.

This part prescribes requirements for obtaining financial protection against damages under advertised and negotiated contracts. It covers bid guarantees, bonds, sureties, and insurance. The terms ''bid'' and ''bidders'' as used in this part include ''proposal'' and ''offerors.''

Subpart 2828.1—Bonds

2828.106–270 Substitution of surety bonds.

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity.

(b) When the contracting officer determines in writing that it is in the Government's best interest to substitute sureties he will set forth his rationale in the determination and submit it to the head of the contracting activity for approval.

(c) When so approved and authorized by the head of the contracting activity, the contracting officer shall notify the principal and surety of the original bond, that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond.

Subpart 2828.2—Sureties

2828.203 Options in lieu of sureties.

When contractors submit any of the types of security described in FAR 28.203 in lieu of furnishing sureties, the contracting officer shall enter into an agreement with the contractor covering a bank account, and suitable covenants protecting the Government's interest, in which the securities will be deposited to protect against their loss during the period of the bond obligation.

Subpart 2828.3—Insurance

2828.307 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest, prior to submitting the determination and the plan to the head of the contracting activity for approval.

PART 2829—TAXES

Subpart 2829.1—General

Sec.
2829.101–70 Resolving tax problems.

Subpart 2829.3—State and Local Taxes

2829.303–70 Application of State and local taxes to government contractors and subcontractors.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

Subpart 2829.1—General

2829.101–70 Resolving tax problems.

Agency designated legal counsel is responsible for resolving tax issues which affect the agency.

[50 FR 4463, Jan. 30, 1985]

Subpart 2829.3—State and Local Taxes

2829.303–70 Application of State and local taxes to government contractors and subcontractors.

(a) It is DOJ policy that DOJ contracts shall not contain clauses expressly designating prime contractors as agents of the Government for the purpose of avoiding State and local taxes.

(b) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating a contractor as such, these circumstances should be extremely rare. Before any DOJ procuring activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from State and local sales and use taxes, the matter will be referred to the AAG/A for review, and approval to ensure that DOJ policy is complied with and that the procuring activity's contention is fully in accordance with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the head of the contracting activity before referral to the AAG/A. The referral will include all pertinent data on which the procuring activity's contention is based, together with a thorough analysis of all relevant legal precedents.

(c) Whenever clauses, procedures, and business practices are cited by DOJ procurring activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a State or local sales or use tax, contracting activities should whenever possible, devise alternative clauses, procedures, and practices for future use which will accomplish their intended purpose without providing the basis for contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes. Any referral to the AAG/A for approval under this subpart shall include comments on the extent to which alternative clauses, procedures, or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from State and local sales or use taxes.

[50 FR 4463, Jan. 30, 1985]

PART 2830—COST ACCOUNTING STANDARDS

Sec.
2830.000 Scope of part.

Subpart 2830.2—Disclosure Requirements

2830.201–270 Impracticality of submission.

Subpart 2830.3—Cost Accounting Standards Contract Requirements

2830.304–70 Waiver.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

2830.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) standards and regulations which the Administrator of the General Services Administration, as a matter of policy, has directed to be applied to certain nondefense contracts. This part does not apply to formally advertised contracts or to any contract with a small business concern (see FAR 30.301(b) for other exemptions).

[50 FR 4464, Jan. 30, 1985]

Subpart 2830.2—Disclosure Requirements

2830.201–270 Impracticality of submission.

When the contracting officer has determined that it is impractical to secure a Disclosure Statement, as required by FAR 30.202, he/she will document the reasons and rationale for such impracticality and forward the determination, and an explanatory cover letter which sets forth the pertinent circumstances and details the solicitation contracting officer's attempts to secure the Disclosure Statement, to the Procurement Executive for review of the documentation prior to forwarding it to the AAG/A for approval.

[60 FR 40110, Aug. 7, 1995]

Subpart 2830.3—Cost Accounting Standards Contract Requirements

2830.304–70 Waiver.

All requests for a waiver of the Cost Accounting Standards requirements shall be forwarded through the DOJ Procurement Executive to the AAG/A after the contracting officer has made the determination required by FAR 30.304(a).

[50 FR 4464, Jan. 30, 1985]

PART 2831—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.
2831.000 Scope of part.

Subpart 2831.1—Applicability

2831.101–70 Objectives.
2831.109–70 Advance agreements.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.
2831.205–3270 Precontract costs.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4464, Jan. 30, 1985, unless otherwise noted.

2831.000 Scope of part.

This part contains cost principles and procedures for (a) the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed and (b) the determination, negotiation, or allowance of costs when required by a contract clause.

Subpart 2831.1—Applicability

2831.101–70 Objectives.

(a) The DOJ Procurement Executive is the AAG/A's designee with respect to the granting of individual deviations to the cost principles of FAR part 31. All requests for individual deviations must cite the facts and circumstances surrounding the request as well as attempts negotiate contractor compliance.

(b) Requests for class deviations from the cost principles set forth in FAR part 31 will be forwarded through the Office of the Procurement Executive prior to submission to the Civilian Agency Acquisition Counsel. Requests must contain the information required in paragraph (a) of this section.

[50 FR 4464, Jan. 30, 1985, as amended at 50 FR 29809, July 22, 1985]

2831.109–70 Advance agreements.

(a) The DOJ and bureau contracting officers are encouraged to negotiate advance agreements concerning the treatment of special or unusual costs to avoid possible subsequent disputes or disallowance of costs based upon unreasonableness or nonallowability. All such agreements shall be negotiated prior to the incurring of such costs by the contractor and in accordance with FAR 31.109. Contracting officers are not authorized to agree to a treatment of costs which would be inconsistent with FAR part 31.

(b) Prior to negotiating an advance agreement, contracting officers shall make a written determination setting forth the reasons and rationale for entering into such advance agreement. In addition, the determination will set forth the nature, the duration, and which contract or contracts are covered by the proposed agreement. All determinations required by this subpart will be reviewed and approved at a level above the contracting officer prior to negotiation of the proposed agreement. The approved determination will be placed in the contract file.

(c) All advance agreements shall be in writing and shall set forth the nature, duration, and contract or contracts covered by the agreements. Advance agreements will be signed by both the contractor and the contracting officer, and made a part of the contract file. Copies of executed advance agreements will be distributed to the cognizant audit office when applicable.

(d) All advance agreements will be incorporated in full in the subsequent contract(s) to which they pertain, prior to award.

Subpart 2831.2—Contracts With Commercial Organizations

2831.205 Selected costs.

2831.205–3270 Precontract costs.

(a) Precontract cost authorizations shall be used only on cost reimbursement contracts, contain no provisions for payment of fees, and be treated as advance agreements in accordance with the provisions of FAR 31.109 and 2831.109–70 of this chapter.

(b) The following limitations apply to the execution of precontract cost authorizations.

(1) Contracts which are estimated to be $100,000 or less may contain a precontract cost authorization providing the authorization is for a period of 30 days or less and the dollar amount does not exceed one third of the total estimated costs (including fee if any) of the contract.

(2) Contracts which are estimated to be greater than $100,000 may contain a precontract cost authorization providing the authorization is for a period of 60 days or less and the dollar amount does not exceed the lesser of $100,000 or one third of the total estimated costs (including fee if any) of the contract.

(3) The limitations expressed under paragraphs (b) (1) and (2) of this section may be increased in unusual circumstances as appropriate, with the written approval of the head of the contracting authority, but in no event shall they exceed one-third of the total estimated costs (including fee if any) of the contract or be for periods of time which exceed 90 days.

PART 2832—CONTRACT FINANCING

Subpart 2832.4—Advance Payments

Sec.
2832.402–70 General.
2832.407–70 Interest.

Subpart 2832.70—Prompt Payment

2832.7001 Policy.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4464, Jan. 30, 1985, unless otherwise noted.

Subpart 2832.4—Advance Payments

2832.402–70 General.

(a) The authority to sign written determinations and findings with respect to making advance payments is vested in those individuals listed in 2801.601(a) for their respective bureaus.

(b) Prior to awarding a contract which contains provisions for making advanced payments, the contract terms and conditions concerning advance payments must be approved at a level above the Contracting Officer, with the advice and consent of the bureau's legal counsel.

(c) The Contracting Officer shall coordinate with the activity that is to provide contract financing for advance payments, the bureau's disbursing or finance office, or the Treasury Department, as appropriate, to ensure that all FAR and departmental requirements are met.

2832.407–70 Interest.

In cases where advance payments may be made on an interest free basis (FAR 32.407(d)), the intent to make such interest free advance payments, and the circumstance permitting interest free advance payments, shall be set forth in the original determination and findings and be approved in accordance with 2832.402–70(a).

Subpart 2832.70—Prompt Payment

2832.7001 Policy.

The head of each contracting activity is responsible for promulgating procedures to ensure that, when specifying due dates, full consideration will be given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

[53 FR 12421, Apr. 14, 1988]

PART 2833—DISPUTES AND APPEALS

Sec.
2833.009–70 Suspected fraudulent claims.
2833.011–70 Contracting officer's decision.

Subpart 2833.1—Protests

2833.105–70 Protests to GSBCA.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4465, Jan. 30, 1985, unless otherwise noted.

2833.009–70 Suspected fraudulent claims.

Contracting officers shall report suspected fraudulent claims to the Director, Commercial Litigation Branch, Civil Division, Room 1138, TODD Building, Washington, DC, (Ref. 28 CFR 0.45(d)).

2833.011–70 Contracting officer's decision.

(a) The Agency Board of Contract Appeals (BCA) which will hear appeals from the decisions of DOJ and bureau contracting officers is the Department of Transportation BCA. The procedures set forth in 41 CFR 12–60 Contract Appeals Board shall apply.

(b) Pursuant to 28 CFR 0.45 the contact for all appeals of decisions of DOJ contracting officers which will be forwarded to the BCA under paragraph (a) of this section, should be sent to the Director, Commercial Litigation Branch, Civil Division, Room 740, TODD Building, Washington, DC 20530.

Subpart 2833.1—Protests

§ 2833.105–70 Protests to GSBCA.

(a) Upon notification of an ADP protest to the GSBCA, the contracting officer shall forward, through the Bureau Procurement Chief, a notification to the Procurement Executive. This notification should be in the form of a memorandum and include the following information:

(1) Protestor.

(2) Nature of protest.

(3) Date protest received in GSBCA.

(4) Procurement item description.

(5) Estimated dollar amount.

(6) Status of award.

(7) Brief summary of bureau position regarding protestor's allegations.

(b) The protest notification to the Procurement Executive should be delivered within two working days after bureau notification. Copies to all final decisions should be delivered to the Procurement Executive within two working days after bureau notification.

[57 FR 24559, June 10, 1992]

PART 2834—MAJOR SYSTEM ACQUISITION

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

2834.002–70 Policy.

In accordance with Pub. L. 98–577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, an executive agency may establish dollar thresholds for the designation of a major system. Accordingly, dollar thresholds for a major system under Office of Management and Budget Circular A–109 are designated below.

(a) *Major Automated Information System.* Within the Department of Justice, a major automated information system is one whose life cycle cost is in excess of $40 million.

(b) *Major Real Property System.* (1) By purchase, when the assessed value of the property exceeds $60 million.

(2) By lease, when the annual rental charges, including basic services (e.g., cleaning, guards, maintenance), exceed $1.5 million.

(3) By transfer from another agency at no cost when the assessed value of the property exceeds $12 million.

(c) *Research and Development (R&D) System.* Any R&D activity expected to exceed $0.5 million for the R&D phase is subject to OMB Circular A–109, unless exempted by the head of the contracting activity.

(d) *Any Other System or Activity.* The head of the contracting activity responsible for the system may designate any system or activity as a Major System under OMB Circular A–109 as a result of Departmental review, e.g., selected systems designed to support more than one principal organizational unit.

(e) *Exemption.* The Assistant Attorney General for Administration, upon recommendation by the head of the contracting activity responsible for the system, may determine that, because of the routine nature of the acquisition, the system (e.g., an information system utilizing only off-the-shelf

hardware or software) will be exempt from the OMB Circular A–109 process, although by virtue of its life cycle costs, it would otherwise be identified as ''major'' in response to OMB Circular A–11.

[50 FR 29809, July 22, 1985, as amended at 52 FR 34390, Sept. 11, 1987; 57 FR 24559, June 10, 1992]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2835—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2835.001–70 Definitions.
2835.003–70 Policy and procedures.
2835.005–70 Work statement.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4465, Jan. 30, 1985, unless otherwise noted.

2835.001–70 Definitions.

(a) *Research* is a systematic, intensive, scientific study including experimentation directed toward increasing knowledge and understanding of those fields of the sciences related to the solution of mission related problems.

(b) *Development* as used in the JAR, is the systematic use of the knowledge and understanding derived from research efforts directed toward the solution of specific problems or the formulation of specific projects or processes, and the subsequent production of useful materials, devices, systems, methods, or prototypes.

(c) *Research and development activities* are those activities which include: Strategic planning and analysis leading to the performance of research or development; research or development leading to the creation of prototype equipment or processes; as well as operational testing; experimentation; field implementation; and evaluation of such equipment or processes. The following are illustrative of research and development activities: Theoretical analyses; exploratory studies and experiments in any field of science and technology; developmental efforts requiring the practical application of investigative findings and theories of a scientific or technical nature; the use of such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto and drawings or designs thereof as well as services, tests, and reports necessary for, or incidental to the performance of experimental, developmental or research work. The term *research and development activities,* as used in this part, ordinarily encompasses those activities listed above. However, in an exceptional case, depending upon the particular facts, some kinds of efforts not set forth above could be categorized as *research and development activities* within this part. These activities do not ordinarily include: Routine product testing; quality control; mapping; collection of general purpose statistics; experimental production; routine evaluation of an experimental program or an operational program; activities concerned primarily with the dissemination of scientific information or the training of scientific and technical personnel. However, in an exceptional case, depending upon the particular facts and circumstances, some kinds of efforts excluded in the preceding sentence could be research and development activities within this supplemental regulation.

§ 2835.003–70 Policy and procedures.

Requiring activities and contracting offices shall adhere to the policies and procedures in this Section in acquiring R&D services.

(a) Acquisition approvals. All requirements for R&D activities of more than $25,000 shall be submitted to the Assistant Attorney General for Administration (AAG/A) for approval prior to solicitation and award by the contracting office. Requirements for R&D will be submitted for approval via the Systems Policy Staff, OIT, and the Office of the Procurement Executive, who will review the submission and recommend to the AAG/A the appropriate action. The proposed R&D project shall be reviewed for the following elements.

(1) The requirement is not duplicative of any R&D activity previously conducted or in progress.

(2) The statement of work clearly and adequately describes the objectives of the R&D project.

(b) Contracting for R&D requirements. Approval of the requirement by the AAG/A does not constitute approval of the method of procurement or contract type. Such decisions will be made by the contracting officer in accordance with applicable regulations.

(c) R&D requirements of $25,000 or less shall be approved by the heads of the contracting activity as defined in 2802.102(c) following review by the Systems Policy Staff and Office of the Procurement Executive.

[51 FR 759, Jan. 8, 1986]

2835.005–70 Work statement.

(a) The preparation of a clear, concise, and complete statement of work is essential to sound contracting for R&D activities. Work statements must be individually tailored by technical and contracting personnel to attain the desired degree of flexibility for contractor creativity, both in submitting proposals and in contract performance. Distinction must be made between level of effort (term) work statements which generally require the furnishing of technical effort and a report on the results thereof, and task (completion) work statements which generally require development of tangible end items designed to meet specific functional requirements.

(b) In preparing statements of work for R&D activities the following elements shall be considered:

(1) A general description of the required objectives and the desired results;

(2) All background information helpful to a clear understanding of the requirements and how they evolved;

(3) Technical considerations which affect the requirements such as known specific phenomena or techniques;

(4) A detailed description of the technical requirements and subordinate or associated tasks;

(5) A description of the reporting requirements and any other deliverable items such as data, experimental hardware, prototypes, etc.; and,

(6) Other special considerations.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2845—GOVERNMENT PROPERTY

Subpart 2845.1—General

Sec.
2845.102 Policy.
2845.105 Records of Government property.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Reports of Government property.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75 (j) and 28 CFR 0.76(j).

SOURCE: 53 FR 49666, Dec. 9, 1988, unless otherwise noted.

Subpart 2845.1—General

2845.102 Policy.

Subject to the provisions in part 45 of the Federal Acquisition Regulations:

(a) The contracting officer is responsible for the delivery of Government property to contractors and serves as property administrator unless property administration responsibilities are explicitly delegated in the contract. Property management responsibilities may be delegated to contracting officer's technical representatives or other representatives authorized to act in the contracting officer's behalf with respect to Government-furnished property.

(b) The contracting officer shall ensure that contractor property responsibilities are clearly delineated and that, consistent with internal bureau policies and procedures, requirements are coordinated with the bureau property managers before award and throughout the course of a contract in which property is furnished.

2845.105 Records of Government property.

If departmental elements maintain the Government's official property management records, the contract records may be kept as a separate account in the bureau's internal property management system, in which case the contracting officer or formally designated property administrator shall serve as custodian of the account.

Subpart 2845.5—Management of Government Property in the Possession of Contractors

2845.505–14 Reports of Government property.

(a) In compliance with FAR 45.505–14, by January 31 of each year, DOJ contractors shall furnish the cognizant contracting officer an annual report of the Department of Justice property for which they are accountable as of the end of the calendar year.

(b) By March 1 of each year, bureaus shall submit a summary report of Departmental property furnished under each contract, as of the end of the calendar year, to the Facilities and Administrative Services Staff, Justice Management Division. The report shall be categorized in accordance with FAR subpart 45.505 and shall include contracts for which the bureau maintains the official government records.

Subpart 2845.6—Reporting, Redistribution, and Disposal of Contractor Inventory

2845.603 Disposal methods.

Policies pertaining to reutilization and disposal of Department of Justice property, including requirements for internal screening, waivers, and disposal reporting, are prescribed in the Justice Property Management Regulations subpart 128–43. Unless otherwise specified, the ''plant clearance officer'' shall be a designated utilization and disposal representative of a bureau's property management office.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2852.1—Instructions for Using Provisions and Clauses

Sec.
2852.101 Using part 2852.
2852.102 Incorporating provisions and clauses.
2852.102–70 Incorporation in full text.
2852.104–70 Procedures for modifying and completing JAR provisions and clauses.
2852.105–70 Procedures for using alternates.

Subpart 2852.2—Texts and Provisions of Clauses

2852.201–70 Contracting Officer's Technical Representative (COTR).
2852.210–70 Brand name or equal.
2852.232–79 Inspection and acceptance.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 0.76(j).

SOURCE: 50 FR 4466, Jan. 30, 1985, unless otherwise noted.

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.101 Using part 2852.

(a) Definitions:

Alternate means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate portion of the basic provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution.

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

Modification, as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the JAR and does not alter the substance of the provision or clause.

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

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

(b) The numbering system used for JAR clauses follows to the extent possible, the numbering system used in FAR part 52.

2852.102 Incorporating provisions and clauses.

2852.102–70 Incorporation in full text.

JAR provisions or clauses shall be incorporated in solicitations and contracts in full text.

2852.104–70 Procedures for modifying and completing JAR provisions and clauses.

(a) JAR provisions and clauses shall not be modified unless the JAR authorizes their modification. Any such authorizations are contained in the provision or clause preface.

(b) When modifying JAR provisions or clauses incorporated by reference, insert the changed wording directly by substituting the changed wording as permitted.

(c) When completing blanks in JAR provisions or clauses incorporated in full text, insert the fill-in information in the blanks of the provision or clause.

2852.105–70 Procedures for using alternates.

(a) A major variation in a JAR provision or clause is accommodated by the use of an alternate. All alternates to a given provision or clause as well as instructions for their use appear after the basic provision or clause.

(b) Bureaus wishing to use an alternate for a JAR required provision or clause must submit the proposed alternate to the Procurement Executive for review and approval prior to using the proposed alternate.

[50 FR 4466, Jan. 30, 1985, as amended at 53 FR 49666, Dec. 9, 1988]

Subpart 2852.2—Texts and Provisions of Clauses

2852.201–70 Contracting Officer's Technical Representative (COTR).

The following clause is recommended for use in solicitations and contracts to delineate COTR responsibility and authority is accordance with 2801.70.

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

(a) Mr./Ms. (Name) of (Organization) (Room No.), (Building), (Address), (Area Code & Telephone No.), is hereby designated to act as Contracting Officer's Technical Representative (COTR) under this contract.

(b) The COTR is responsible for: receiving all deliverables; inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment prior to forwarding the original invoice to the payment office and a conformed copy to the Contracting Officer.

(c) The COTR does not have the authority to alter the contractor's obligations under the contract, direct changes that fall within the purview of the General Provisions clause entitled ''Changes,'' and/or modify any of the expressed terms, conditions, specification, or cost of the agreement. If as a result of technical discussions it is desirable to alter/change contractual obligations or the Scope of Work, the Contracting Officer shall issue such changes in writing and signed.

(End of clause)

2852.210–70 Brand name or equal.

This clause shall be used in accordance with 2810.004–70. (As used in this clause, the term ''brand name'' includes identification of products by make and model.) When this clause is used, the salient features of the ''brand name'' item must be set forth in the solicitation in order to permit offerors of ''equal products'' to bid.

BRAND NAME OR EQUAL

(a) If items called for by this invitation for bids have been identified in the schedule by a ''brand name or equal'' description, such identification is intended to be descriptive but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering ''equal'' products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics and requirements listed in the invitation.

(b) Unless the bidder clearly indicates in his bid that he is offering an ''equal'' product, his bid shall be considered as offering a brand name product referenced in the invitation for bids.

(c)(1) If the bidder proposes to furnish an ''equal'' product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity. Caution to Bidders: The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to ensure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to; (i) determine whether the product offered meets the salient characteristics requirement of the invitation for bids, and (ii) establish exactly what the bidder proposed to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall; (i) include in his bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after the bid opening to make a product conform to a

brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

2852.232–79 Inspection and acceptance.

The following clause is recommended for use in solicitations and contracts to establish definitive dates for inspection and acceptance.

INSPECTION AND ACCEPTANCE

(a) Inspection and acceptance of the supplies or services to be furnished hereunder shall be performed at *——— by the COTR or his designated representative, in accordance with the Inspection clause and any other provisions specified in this contract. The Government reserves the right to conduct any tests it deems reasonably necessary to ensure that the supplies or services provided conform in all respects to the contract specifications. Supplies or services which upon inspection are found not to be in conformance with contractual specifications shall be promptly rejected and notice of such rejection, together with appropriate instructions, will be provided the contractor by the Contracting Officer.

(b) The Government will use its best efforts to inspect and accept/reject the supplies or services provided within **——— days. Failure of the Government to so inspect the supplies or services within the above stated time shall not be construed as acceptance of such supplies or services.

(End of clause)

(Oct. 1988)

*Contracting officer to insert the appropriate place of inspection.

**Contracting officer to insert the appropriate number of days required for inspection and acceptance.

(End of clause)

[50 FR 4466, Jan. 30, 1985, as amended at 53 FR 49666, Dec. 9, 1988]

SUBCHAPTER I—SPECIAL AGENCY REGULATIONS

PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

Subpart 2870.1—Definitions

Sec.
2870.101 Definitions.

Subpart 2870.2—Agency Acquisition Regulations for Leases of Real Property

2870.201 Authority to lease.
2870.202 Review by the Office of the Procurement Executive.
2870.203 Competition.
2870.204 Procedures for executing a lease.

AUTHORITY: 28 U.S.C. 510; 40 U.S.C. 486(C); 28 CFR 0.75(j); and, 28 CFR 0.76(j).

SOURCE: 56 FR 26342, June 7, 1991, unless otherwise noted.

Subpart 2870.1—Definitions

2870.101 Definitions.

Throughout this regulation the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning.

(a) *Acquisition* means the acquiring, by lease with appropriated funds, of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed.

Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

(b) *Contract* means lease.

(c) *Contractor* means lessor.

(d) *Landlord* or *lessor* means any individual, firm, partnership, trust, association, State or local government, or other legal entity that leases real property to the Government.

(e) *Lease* or *leasehold interest in real property* means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

Subpart 2870.2—Agency Acquisition Regulations for Leases of Real Property

2870.201 Authority to lease.

The authority for Federal agencies to enter leases is found in 41 CFR 101–18.104. Contracting officers exercising leases on behalf of the Department or of a bureau must assure that all necessary delegations have been obtained from the General Services Administration (GSA) and are within the authority of the Justice Property Management Regulations (JPMR), subpart 128–1.60.

2870.202 Review by the Office of the Procurement Executive.

Leases are subject to the same review requirements as other types of acquisitions, in accordance with the JAR 2801.602–70. These leases which exceed the minimum dollar thresholds for contract review must be submitted to the Office of the Procurement Executive for review and approval prior to the signing of the lease agreement on behalf of the Government.

2870.203 Competition.

The competition requirements of FAR part 6 apply to the acquisition of leasehold interests in real property. The acquisition of space through other than full and open competition must be held to the smallest number practicable and be justified in writing and approved in accordance with FAR 6.303 and 6.304.

2870.204 Procedures for executing a lease.

(a) Pursuant to the requirements of the delegations issued by GSA, all lease acquisitions shall be performed in accordance with the guidance provided

in the General Services Acquisition Regulation (GSAR) 48 CFR chapter 5, part 570, Acquisition of Leasehold Interests in Real Property, except for deviations approved by the Procurement Executive.

(b) The following FAR clauses are to be used in lease agreements as applicable. Special leasing clauses are found in GSA forms 3516, Solicitation Provisions, 3517, General Clauses and 3518 Representations and Certifications, which are located in subpart 553.370 of the GSAR.

1. Solicitation provisions.

(i) 52.203–8 Requirement for Certification of Procurement Integrity

(ii) 52.204–13 Taxpayer Identification

(iii) 52.215–10 Late Submission, Modifications and Withdrawals of Offers

(iv) 52.215–12 Restrictions on Disclosure and Use of Data

(v) 52.215–13 Preparation of Offers

(vi) 52.215–14 Explanation to Prospective Offerors

(vii) 52.222–24 Preaward On-site Equal Opportunity Compliance Review

(viii) 52.233–2 Service of Protest (Required clause)

2. Lease Clauses

(i) 52.202–1 Definitions (Required Clause)

(ii) 52.203–1 Officials Not to Benefit

(iii) 52.203–3 Gratuities

(iv) 52.203–5 Covenant Against Contingent Fees (Required Clause)

(v) 52.203–7 Anti-Kickback Procedures (Required clause)

(vi) 52.203–9 Requirement for Certification of Procurement Integrity—Modification

(vii) 52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment

(viii) 52.212–6 Time Extensions

(ix) 52.215–1 Examination of Records by Comptroller General (Negotiated over $10,000)

(x) 52.215–22 Price Reduction for Defective Cost or Pricing Data

(xi) 52.215–24 Subcontractor Cost or Pricing Data

(xii) 52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (Applicable to leases which exceed $10,000)

(xiii) 52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan (Applicable to leases which exceed $500,000)

(xiv) 52.219–13 Utilization of Women-Owned Small Business (Applicable to leases which exceed $25,000)

(xv) 52.219–16 Liquidated Damages—Small Business Subcontracting Plan

(xvi) 52.222–26 Equal Opportunity (Applicable to leases which exceed $10,000)

(xvii) 52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Applicable to leases which exceed $10,000)

(xviii) 52.222–36 Affirmative Action for Handicapped Workers (Applicable to leases which exceed $2,500)

(xix) 52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Applicable to leases which exceed $10,000)

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(a)(1)(iv) removed; (a)(1)(v) redesignated as (a)(1)(iv) 45771
1807.204 (Subpart 1807.2) Added 27854
1807.7102 (a) revised 27855
(c) revised 45771
1807.7105 (a) amended 27855, 45772
1807.7106 Amended 27855
1808.802 Amended 45772
1809.106–7001 Revised 27855
1809.202 Added 27855
1809.203–70 (a) revised 27855
1809.206–1 Added 27855
1812.302—1812.303–70 (Subpart 1812.3) Revised 45772
1813.404 (a) amended 27855
1813.7003 (a) amended 27855
1814.201–3 Removed 27855
1815.406–3 Removed 27855
1815.406–5 (a) and (b) redesignated as (b) and (c); new (a) added; new (b)(9) revised 27855
1815.407–70 Amended 27855
1815.412 Removed 28575
1815.507 (c) revised 27856
1815.570 Amended 45772
1815.613–70 Revised 27856
1815.613–71 (a)(4) added 27856
(a)(1) introductory text amended 45772
1815.704 Revised 45772
1819.001 Heading added 27856
1819.001–70 Redesignated from 1819.101 and heading revised 27856
1819.101 (Subpart 1819.1) Heading removed 27856
1819.101 Redesignated as 1819.001–70 and heading revised 27856
1822.305 (Subpart 1822.3) Added; interim 4502
Removed 23765
1822.403–1—1822.403–4 (Subpart 1822.4) Added; interim 4502
Removed 23765
1822.1103 (a) revised 45772
1825.109 Removed 27856
1825.109–70 Removed 27856
1825.604 (e) added 27856
1827.373 (a)(1) and (c)(1) revised; (g) added 27856

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1827.474 (b)(2) revised 45772
1827.475–10 Removed 45773
1832.470 Removed 27856
1833 Heading revised 27856
1833.211–70 Added 27856
1836.203 (a) amended 27857
1836.602–71 (b) revised 45773
1837.204–70 (d) revised 27857
(d) and (e) revised 45773
1837.204–71 Added 27857
1837.205–71 (b)(1) and (4) revised 27857
1839.7003–2 Amended 27857
1839.7005 (a) revised 45773
1842.202–70 (e) amended 27857
(a)(1) amended; (b) revised 45773
1842.202–71 (b)(2) removed; (b)(3) and (4) redesignated as (b)(2) and (3) 45773
1842.302 Text added 45773
1845.106–70 (c) revised 27857
1845.302–70 (a) amended 27857
1845.7103 Amended 45774
1845.7205 (f)(1) revised 27857
1846.673 (a) revised 45774
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1852.214–70 Removed 27858
1852.215–10 Removed 28575
1852.215–73 Removed 27858
1852.222–4 Added; interim 4502
Removed 23765
1852.222–7 Added; interim 4503
Removed 23765
1852.225–70 Removed 27858
1852.227–82 Removed 45774
1852.227–84 Added 27858
1852.227–85 Added 27858
1852.235–70 Revised 45774
1852.251–70 Revised 27858
1853.107 Revised 45774
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1853.212 Removed 45774
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1853.227 Added 45774
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Heading revised 45774

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2401.403 Amended 7948
2401.404 Amended 7948
2403.203 Amended 7948
2403.204 Amended 7948

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2403.601 Amended 7948
2407.102 Amended 7948
2413 Authority citation revised 40333
2413.404 Added (effective date pending) 40333
2414.407–701 (d) correctly designated 7948
2415.506 (b)(2) redesignated as (b)(3); new (b)(2) added 7948
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2433.104 (f) revised (effective date pending) 40333
2433.104–70 Text added (effective date pending) 40333
2433.105 Revised (effective date pending) 40333

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1601—1606 (Subchapter A) Heading added 16037
1601 Added 16037
1602 Added 16038
1603 Added 16039
1604 Added 16039
1605 Added 16039
1606 Added 16039
1614—1616 (Subchapter C) Heading added 16039
1614 Added 16039
1615 Added 16040
1616 Added 16041
1622—1624 (Subchapter D) Heading added 16041
1622 Added 16041
1624 Added 16041
1631—1649 (Subchapter E) Heading added 16041
1631 Added 16041

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1632 Added 16043
1633 Added 16043
1644 Added 16043
1646 Added 16044
1649 Added 16044
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1652 Added 16044
1653 Added 16048

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1802.101 Revised 15414, 34795
1803.303 (a)(5) and (c) revised 34796
1803.7001 Revised 34796
1804.7002 Revised 34796
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1804.7102–2 (a) and (b) amended; (f) removed; (g) and (h) redesignated as (f) and (g) 15415
1804.7102–4 (a) revised 15415
1804.7102–5 (c) removed; (d) redesignated as (c) 15415
1804.7103–2 Revised 15415
1804.7401 (Subpart 1804.74) Added 34796
1805.202 Revised 46766
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1807.103 (b)(2) revised 46766
1807.7102 (a) introductory text amended; (d)(1) removed; (d) (2) and (3) redesignated as (d) (1) and (2) 46766
1808.302 Removed 46766
1808.303 Amended 15415
1808.304–2 (c) amended 15415
1808.304–4 (a) amended 15415
1808.304–571 Amended 15415
1809.106–7204 (a)(2)(ii) amended 46766
1809.206–71 Revised 15415
1810.002–70 Revised 34798
1810.004 (a) revised 34798
1810.004–71 (a) through (g) revised 34798
1810.007 Revised 15415
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1810.008–70 Revised 34798
1810.011 Revised 15415
1812.104–70 (c) added 34798
(b) amended 46766
1813.204—1813.205 Added 46766
1813.303 Revised 34799
1813.403–70 (c)(2) amended 34799
1815.407 Revised 15415
1815.407–70 Revised 15415
1815.412 Added 15415
1815.413–2 (c) amended 15416
(e) amended 46766
1815.613–70 Amended 15416
1815.805–5 (a) revised 34799
1815.870–1—1815.870–2 Revised 34799
1815.970 (f) introductory text revised 46766
1815.1003 Amended 15416
1816.203–4 Revised 34799
1816.303 Revised 34800
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1816.702 Removed 34801
1822.101–1 (c) revised 15416
1822.103–4 Revised 15416
1822.608–5 Revised 34801
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1823.7002 (d)(1)(vii) revised 34801
1825.402 Text added 15416
1827.404—1827.409 (Subpart 1827.4) Revised 46767
1828.305 (b)(2)(ii) revised 15416
1828.309 (a) designation removed 15416
1830.101 Revised 46769
1830.201–5 (Subpart 1830.2) Added 46769
1830.304 (Subpart 1830.3) Removed 46769
1831 Revised 46769
1831.303 (Subpart 1831.3) Added; interim 13685
1831.703 (Subpart 1831.7) Added; interim 13685
1832.111–70 (d) amended 15416
(e) added 34802
(d) revised 46769
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1832.705–270 Revised 46770
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1842.173 Revised 34802
1842.202–70 (d) revised 34802
1842.7001 (Subpart 1842.70) Added 34802
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1845.106–70 (d) revised 34802
1845.106–71 Added 34802
1845.505–14 Revised 34802
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1852.204–71 Revised 15417
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1852.204–73 Added 34805
1852.208–7000—1852.208–7001 Removed 46770
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1852.242–70 Added 34806
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1632.170—1632.172 Added 51784
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1801.401 Revised 26933
1801.602–3 Added 13056
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1804.103 Revised 51340
1804.170 (b) amended 38414
1804.402 Revised 38414
1804.404–70 Added 51340
1804.671–8 Removed 26933
1804.676 Amended 51340
1804.7102 Amended 38414
1804.7102–4 (a) amended 38414
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1805.303–71 (b)(1) amended 26933
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1807.101—1807.170–3 (Subpart 1807.1) Revised 26933
1807.103 (a)(2)(vii) revised 38415
1807.7001 (Subpart 1807.70) Added 38415
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1807.7100—1807.7107 (Subpart 1807.71) Revised 26935
1807.7102 (c) revised 13056
1807.7105 (a) amended 13056
1807.7106 Introductory text and Table 7–1 heading revised 13056
1808.002–76 Added 51340
1808.303 Revised 26936
1808.304–5 Revised 26937
1808.304–570 Revised 26937
1808.304–572 (a)(2)(ii) and (4) amended 51340
1808.305 Amended 51340
1808.309 (a) through (i) amended 51340
1808.705–4 Removed 26937
1808.711 Removed 26937
1808.870 Added 51340

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1809.670 (Subpart 1809.6) Added 51341
1810.011 Revised 51341
1810.011–70 Added 51341
1812.104–70 (d) and (e) added 51341
1813.205 Revised 51341
1814.201–6 Added 51341
1814.201–670 Added 51341
1814.404–170 (b)(2) revised 38415
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1815.406–4 Revised 51341
1815.406–5 Revised 51342
1815.407 (a) amended 32902
1815.407–70 (a) revised 13056
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1815.412 Introductory text amended 32902
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1815.613–70 Amended 32902
1815.613–71 (a)(1) introductory text revised 13057
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(a) revised 38415
1815.708 Added 51342
1815.708–70 Added 51342
1815.1003 (Subpart 1815.10) Heading revised 51342
1816.202 Added 51342
1816.202–70 Added 51342
1816.203–4 (a) introductory text, (1), and (2) and (g) amended 51342
1816.207 Added 51342
1816.207–70 Added 51342
1816.307 Revised 51343
1816–307–70 Revised 51343
1816.404 Added 26937
1816.404–2 Added 26937
1816.405 Revised 51343
1816.405–70 Added 51343
1816.603–4 Added 51343
1816.603–470 Added 51343
1817.200—1817.208 (Subpart 1817.2) Revised 26937
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1817.504 (a) amended 32903
1819.001 Revised 13058

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1819.170 (Subpart 1819.1) Added 51343
1819.202–4 Added 13058
1819.202–5 Removed 13058
1819.402 Removed 13058
1819.470 Removed 13058
1819.502–2 Removed 13058
1819.602–70 Revised 13058
1819.708 Added 51343
1819.708–70 Added 51343
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1819.810 Removed 13058
1822.302 (Subpart 1822.3) Added 13058
1822.403–4—1822.406–13 (Subpart 1822.4) Added 13058
1822.608 Removed 26938
1823.303–70 Revised 51344
1823.7004 (e) and (f) added 51344
1824 Revised 26938
1824.102 (Subpart 1824.1) Added 38415
1824.202 (Subpart 1824.2) Added 38415
1825.101—1825.105 (Subpart 1825.1) Revised 38415
1825.202—1825.205–70 (Subpart 1825.2) Revised 38417
1825.402 Revised 13059
1825.405 Revised 51344
1825.407 Added 51344
1825.407–70 Added 51344
1825.605 Added 51344
1825.605–70 Added 51344
1825.703 (a) and (b) designation removed 51344
1825.904 Added 51344
1825.903–70 Redesignated as 1825.904–70 51344
1825.904–70 Redesignated from 1825.903–70 51344
1827.303 Added 51344
1827.371 Revised 13059
1827.373 Heading, (a) (1) through (3) revised; (a)(4) added 51344
1827.374–1 (f) removed; (g) and (h) redesignated as (f) and (g); new (g) revised 13059
(d) amended 51345
1827.374–4 (a)(2) amended 51345
1827.404 (e)(1) amended 51345
1827.405 (a) (1) and (2) amended 51345
1827.409 (e), (f), (g) and (h) revised 51345

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1828.106–6 Added 26938
1828.001 Added; interim 45096
1828.101 Added 51345
1828.101–70 Added 51345
1828.305 (b)(2) and (ii) revised 51345
1828.309 Amended 51345
1828.370 (a) revised; (c) added 51345
1828.372 Added 38418
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1829.170 Removed 13059
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Revised 38418
1830.7000—1830.7002–6 (Subpart 1830.70) Added 38418
1831.303 (Subpart 1831.3) Removed 47956
1831.703 (Subpart 1831.7) Removed 47956
1832.111–70 Revised 13059
1832.172 Removed 26938
1832.402 Revised 26938
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1832.502–470 Added 38421
1832.704 (b) revised 38421
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1833.103 Revised 51346
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1835.016–70 Added 32903
1835.071 Amended 38421
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1836.570—1836.570–2 (Subpart 1836–5) Added 51346
1837.110 Heading added 51346
1837.110–70 Added 51346
1839.000 Removed 26938
1842.202 (a)(2)(iv) removed; (a)(2)(v) through (viii) redesignated as (a)(2) (iv) through (vii) 38421
1842.202–70 (a) amended; (d) removed; (e) and (f) redesignated as (d) and (e) 38421
1842.202–72 Added 38421
1842.270 Added 13060
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1842.803 (c)(5) amended 51347
1842.7001—1842.7003 (Subpart 1842.70) Revised 51347
1842.7001 (a) revised 26938
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1845.302–2 Revised 38423
1845.302–270 Removed 38423
1845.406 Added 38423
1845.502–70 Removed; new 1845.502–70 redesignated from 1845.502–71 38424
1845.502–71 Redesignated as 1845.502–70; new 1845.502–71 redesignated from 1845.502–72 38424
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1845.604 Revised 38424
1845.607 Revised 38424
1845.607–70 Added 38424
1845.607–71 Removed 38424
1845.607–72 Removed 38424
1845.7101 Amended 26939
1846.270 (Subpart 1846.2) Added 38424
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1847.305–70 Revised 38424
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1849.101–70 (a) introductory text revised 13060
1849.505—1849.505–70 (Subpart 1845.5) Revised 38425
1849.603—1849.603–70 (Subpart 1849.6) Revised 38425
1851.7001—1851.7005 (Subpart 1851.70) Removed 13060
1852.102 Removed 51348
1852.102–2 Removed 51348
1852.103 Revised 26939
1852.103–70 (a) revised 13060
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1852.204–72 Revised 51349
1852.204–73 Removed 51349
1852.204–74 Added 51349
1852.204–75 Added 51349
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1852.208–74—1852.208–77 Added 51350
1852.208–78—1852.208–80 Added 51351
1852.208–7002—1852.208–7012 Removed 51351
1852.208–81 Added 51351
1852.208–83 Added 51352

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1852.209–70 Revised 51352
1852.209–71 Revised 51352
1852.209–72 Added 51352
1852.210–70 Revised 26939
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1852.210–71 Added 51352
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1852.212–13 Removed 51353
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1852.222–70 Revised 13061
1852.222–71 Revised 13061
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1852.223–70 Revised 51359
1852.223–71 Revised 51360
1852.223–72 Revised 51360
1852.223–73 Revised 51360
1852.225–71 Revised 51360
1852.225–72 Revised 51360
1852.225–73 Revised 51360
1852.227–11 Removed 51360
1852.227–14 Removed 51360
1852.227–19 Removed 51360
1852.227–70 Revised 13061
1852.228–70 Revised 51360
1852.228–71 Revised 51362
1852.228–72 Revised 51363
1852.228–73—1852.228–75 Added 38426
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1852.228–74 Revised 51364
1852.228–75 Revised 51364
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1852.232–1 Removed 13063
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1852.232–4 Removed 13063
1852.232–7 Removed 13063
1852.232–10 Removed 13063
1852.232–16 Removed 13063
1852.232–22 Added 38427
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1852.232–71 Removed 13063
1852.232–73 Removed 13063
1852.232–74 Removed 13063
1852.232–77 Introductory text revised 13063
1852.232–78 Removed 13063
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1852.232–81 Added 38427
1852.232–82 Added 38427
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1852.235–72 Introductory text revised 13063
Introductory text amended 26939
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1852.236–74 Added 51365
1852.237–70 Added 51365
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1852.242–71 Added 51365
1852.242–72 Added 51365
1852.245–70 Revised 13063
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1852.245–75—1852.245–78 Added 38427
1852.245–79 Added 38428
1852.245–80 Added 38428
1852.246–70—1852.246–72 Added 38428
1852.246–73 Added 38429
1852.247–72 Added 38429
1852.247–73 Added 38429
1852.250–70 Amended 38429
Introductory text amended 51365
1852.250–71 Amended 38429
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1852.251–70 Removed 13064
1853.242–70 (f) added 13064
1853.251 Removed 13064
1870.103 Appendix I amended 13064, 26940
1870.201—1870.203 (Subpart 1870.2) Added 32905
1870.301—1870.303 (Subpart 1870.3) Added 38429

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2401 Authority citation revised 46533
2401.403 Amended (effective date pending) 46533
2401.601–70 Eff. 3–4–88 7187
2401.601–71 Eff. 3–4–88 7187
2401.601–72 Eff. 3–4–88 7187
2401.601–73 Eff. 3–4–88 7187
2401.602–3 Added (effective date pending) 46533
2401.602–70 Removed (effective date pending) 46533
2402.101 Eff. 3–4–88 7187
Amended (effective date pending) 46534
2406.304–70 (a)(1) amended (effective date pending) 46534
2409 Authority citation revised 46534
2409.504 (a)(5) revised; (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); new (b)(1) amended; new (d) revised (effective date pending) 46534
2409.508—2409.508–2 Added (effective date pending) 46534
2412 Added (effective date pending) 46534
2413 Authority citation revised 46534
2413.107 (Subpart 2413.1) Added (effective date pending) 46535

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2413.505—2413.505–2 (Subpart 2413.5) Added (effective date pending) 46535
2414.406–3 (e)(3) amended (effective date pending) 46535
2415.407 Added (effective date pending) 46535
2415.411 Added (effective date pending) 46535
2415.411–70 Added (effective date pending) 46535
2416.405 Revised (effective date pending) 46535
2416.504 Added (effective date pending) 46535
2417 Added (effective date pending) 46535
2419.503 (a) heading revised; (a) text amended (effective date pending) 46535
2422 Added (effective date pending) 46535
2424 Authority citation revised 46536
2424.202–70 Added (effective date pending) 46536
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2432 Revised (effective date pending) 46536
2434 Added (effective date pending) 46537
2437.101—2437.110 (Subpart 2437.1) Heading and sections added (effective date pending) 46537
2442 Added (effective date pending) 46537
2446 Added (effective date pending) 46537
2451 Added (effective date pending) 46538
2452 Added (effective date pending) 46538
2453 Added (effective date pending) 46543
2470 (Subchapter U) Removed (effective date pending) 46544

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2801.301 (c) amended 49665
2801.602–3 Added 49665
2801.602–70 (a), (b), (c), and (d) revised 49665
2801.603 (b)(2) amended 49665

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2804.70 Removed 49665
2804.7001 (a) and (b) removed 12421
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2806.501 (b) amended 49666
2832.7000—2832.7001 (Subpart 2832.70) Heading amended 12421
2832.7000 Revised 12421
2832.7001 Revised 12421
2832.7002 Removed 12421
2845 (Subchapter G) Added 49666
2845 Added 49666
2852.105–70 (b) amended 49666
2852.232–70—2852.232–78 Removed 12422
2852.232–79 Amended 49666

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1515.407 (a)(3) revised; (b) removed; (c) redesignated as (b); eff. 10–15–89 36980
1529 Added 49998
1532.908 (Subpart 1532.9) Added 9215
Amended; interim 40876
1532.70—1532.7003 (Subpart 1532.70) Removed 9215
1552.215–75 Removed; eff. 10–15–89 36980
1552.215–76 Introductory text and (q) revised; eff. 10–15–89 36980
1552.229–70 Added 49998
1552.232–70 Revised 9215
Amended; interim 40876
1552.232–71—1552.232–72 Removed 9216

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1801.270 Revised 53622
1801.270–4 Revised 10796
1801.271 Revised 53622
1801.272 Added 53622
1801.272–1 Added 53622
1801.272–2 Added 53622
1801.272–3 Added 53622
1801.302 Added 53622
1801.302–70 (a) and (b) amended 53622
1803.104 Added 39360
1803.104–2 Added 53623
1803.104–4 Added 39360

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1803.104–5 Added 39360
1803.104–6 Added 39360
1803.104–7 Added 39361
1803.104–9 Added 39361
1803.104–11 Added 39361
1803.104–12 Added 39361
1804.103 Added 39361
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1804.601 Amended 53623
1804.602 Added 39361
1804.603 Added 39361
1804.671 Amended 53623
1804.671–1 (a)(1)(v) added 39362
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1804.671–4 Revised 39362
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1804.671–5 Revised 39368
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1804.671–6 (d) revised 39369
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1805.207 Revised 39369
1805.303–71 (b)(1) introductory text revised 10796
1807.103 (b)(1) introductory text revised; (b)(2) removed; (b)(3) redesignated as (b)(2) 10796
1807.170–1 Revised 10796
1807.7200—1807.7206 (Subpart 1807.72) Added 39370
1808.304–573 Added 53630
1809.106–70 (f)(2)(ii) amended 39370
1809.404 Revised 39370
1809.405 Revised 39370
1809.405–1 Revised 39370
1809.405–2 Revised 39371
1813.7101—1813.7107 (Subpart 1813.71) Added 53630
1814.201–2 Revised 39371
1814.202 Added 53630
1814.202–7 Added 53630
1815.402 Added 53631
1815.413–2 (e) removed 39371
1815.613–70 Amended 10798
1815.613–71 (a)(4) revised 10798
1815.805–5 (e) amended 53631
1815.806 Removed 39371
1815.904 Removed 53631
1815.1003—1815.1003–4 (Subpart 1815.10) Revised 10798
1816.203–4 (a) removed; (b) through (g) redesignated as (a) through (f); new (a) amended 10798
1816–307–70 (c) amended 10798

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1817.200 Revised 53631
1817.204 (a) revised 53631
1819.170 (Subpart 1819.1) Heading Revised 39371
1819.501 Revised 53631
1819.505 (a) amended 53631
1819.1005 (Subpart 1819.10) Added 39371
1822.101–72 Added 39371
1822.608–4 Added 10799
1822.1000—1822.1051 (Subpart 1822.10) Revised 10799
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1822.1001—1822.1008 (Subpart 1822.10) Revised 39371
1823.7102 Revised 10806
1824.103 Added 39372
1825.1002—1825.1004 (Subpart 1825.10) Added 39372
1825.7100—1825.7105 (Subpart 1825.71) Added; interim 18113
1825.7104 (b) (2) and (3) corrected 19576
1827.372 (a)(1) revised; (h) and (i) redesignated as (i) and (j); new (h) added 39372
1827.373 (a) revised 39372
1827.374–1 (a) through (g) redesignated as (b) through (h); new (a) added 39373
1827.374–2 Revised 39373
1827.407 Added 39373
1827.670—1827.670–2 (Subpart 1827.6) Added 39373
1828.001 Added 7037
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1832.702–70 (d) added 53631
1832.705–2 Revised 10806
1832.705–270 (d) removed 10806
1832.903—1832.970 (Subpart 1832.9) Revised 53631
1832.908 Revised 10806, 39373
1834.005–1 Added 10807
1835.070 Heading revised 10807
1836.602–70 (b) revised 39373
1836.602–71 Revised 39374
1836.609 Removed 10807
1836.609–70 Removed 10807
1837.101 Added 5625, 10807
1837.110 Text added 5625
Revised 10807
1837.170 Added 5625, 10807
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1842.202–71 Revised 10807

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1842.7003 (b) revised; (c) added 39374
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1845.102–70 Revised 39374
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1845.106–70 Heading revised 10808
1845.302–72 Added 10808
1846.470 Amended 10808
1847.305–70 (a) revised 10808
1848.102—1848.104–2 (Subpart 1848.1) Revised 10808
1848.201—1848.201–70 (Subpart 1848.2) Revised 10809
1850.402 Revised 39374
1850.403–2 Revised 39375
1850.403–70 Revised 39375
1850.403–370 Revised 39375
1852.204–75 Revised 39375
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1852.232–25 Removed 10813
1852.232–75 Revised 10813
1852.232–77 Revised 10813
1852.232–80 Revised 10813
1852.232–81 Revised 10813
1852.232–82 Revised 10814
1852.233–1 Removed 10814
1852.235–70—1852.235–72 Revised 10814
1852.236–70—1852.236–72 Revised 10814
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1852.245–71—1852.245–73 Revised 10816
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1852.245–75 Revised 10817
1852.245–77—1852.245–79 Revised 10817
1852.245–80 Revised 10818
1852.246–70 Revised 10818
1852.247–70—1852.247–71 Revised 10818
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1852.250–70 Amended 39376
1852.250–71 Removed 39376
1852.250–72 Amended 53632
1852.252–70 Revised 10819
1853.204–70 (b) revised 39376
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1870.401—1870.403 (Subpart 1870.4) Added 53632

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2401.602–3 Addition; eff. 3–3–89 8336
2401.602–70 Removal; eff. 3–3–89 8336
2402.101 Amendment; eff. 3–3–89 8336
2406.304–70 (a)(1) amendment; eff. 3–3–89 8336
2409.504 (a)(5) revision, (b) removal, (c) through (e) redesignation as (b) through (d); new (b)(1) amendment; new (d) revision; eff. 3–3–89 8336
2409.508—2409.508–2 Additions; eff. 3–3–89 8336
2412 Addition; eff. 3–3–89 8336
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2417 Addition; eff. 3–3–89 8336
2419.503 (a) heading revision, (a) text amendment; eff. 3–3–89 8336
2422 Addition; eff. 3–3–89 8336

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2424.202–70 Addition; eff. 3–3–89 8336
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2427 Addition; eff. 3–3–89 8336
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2434 Addition; eff. 3–3–89 8336
2437.101—2437.110 (Subpart 2437.1) Addition; eff. 3–3–89 8336
2442 Addition; eff. 3–3–89 8336
2446 Addition; eff. 3–3–89 8336
2451 Addition; eff. 3–3–89 8336
2452 Addition; eff. 3–3–89 8336
2453 Addition; eff. 3–3–89 8336
2470 (Subchapter U) Removal; eff. 3–3–89 8336

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2801.404 Revised 40877
2801.470 Added 40877
2813.570 Added 40878
2819.506 (Subpart 2819.5) Added 40878

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1501.602–3 Added 18340
1501.670 Removed 18341
1501.670–6 (c) nomenclature change 24579
1502.100 Amended 24579
1503.301 Nomenclature change 24579
1503.408–1 Nomenclature change 24579
1503.409 Nomenclature change 24579
1503.502 Nomenclature change 24579
1506.202 Nomenclature change 24579
1510.007 Nomenclature change 24579
1510.011–73 Revised 39622
1510.011–74—1510.011–77 Redesignated as 1510.011–75—1510.011–78; new 1510.011–74 added 39622
1513.404 Revised 48623
1514.201–7 Added 24579
1514.401–1 Revised 24579
1515.604 (a) amended 24579
1515.609 (a) amended; (b) revised 24579
1515.612 (a)(1) introductory text, (i), (ii), and (iii), and (2) introductory text revised 24579
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1516.603—1516.603–3 (Subpart 1516.6) Added 24580
1517.202 Nomenclature change 24579
1519.201–2 (c)(3) amended 24579
1522.608–4 Nomenclature change 24579
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1522.1306 Nomenclature change 24579
1522.1403 Nomenclature change 24579
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1532.908 Revised 38807
1533.209 Nomenclature change 24579
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1542.1202 (b) amended 24580
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1552.210–73 Revised 39622
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1552.227–72 Removed 48624
1552.227–73 Removed 48624
1552.227–74 Removed 48624
1552.227–75 Removed 48624
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1602.170–6 Revised 27414
1602.170–11 Redesignated as 1602.170–12; new 1602.170–11 added 27414
1602.170–12 Redesignated from 1602.170–11 27414
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1615.804–71 Revised 27414
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1615.805–70 (c) redesignated as (d); new (c) added 27415
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1652.204–70 Amended 27415
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1652.215–70 Revised 27415
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1652.216–70 Amended 27416
1652.216–71 Revised 27416
1652.222–70 Amended 27417
1652.224–70 Amended 27417
1652.232–72 Amended 27418
1652.232–73 Added 27418
1652.244–70 Amended 27418
1652.246–70 Revised 27418
1652.249–70 Amended 27418
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1804.470–3 Added 47478
1804.470–4 Added 47478
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1807.7102 (b)(1)(ii) amended 27088
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1809.106–70 (d)(1) and (j)(2)(iv) introductory text amended 27088
1809.404 (b) amended 27088
1810.011–70 (d) amended 47478
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1839.7003–2 (c) amended 12177
1839.7003–3 Revised 12177
1839.7004 (a) removed; (b) and (c) redesignated as (a) and (b); new (a) amended 12177
1839.7005 Revised 12177
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1842.102–70 Amended 12177
1842.1004 Amended 47479
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1846.470 Revised 9447
1852.204–76 Added 47479
1852.208–81 Amended 27089
1852.208–83 Amended 12177
1852.210–75 Amended 47479
1852.219–74 Added 47479
1852.225–74 Added 12178
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1852.225–75 Added 12178
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1852.227–11 Added 27089
1852.227–14 Added 27089
1852.227–19 Added 27090
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1852.227–86 Amended 27090
1852.232–81 Amended 27090
1852.242–71 Amended 27090
1852.243–70 Revised 47480
1852.246–71 Amended 27090
1852.246–74 Added 9447
Revised 27090
1852.246–75 Added 27090
1852.250–72 Introductory text corrected 38808
1853.107 (a) amended 47480
1853.215–2 Amended 27090
1870.303 Appendix I amended 27090
1870.403 Appendix I amended 47480

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2804.900—2804.970 (Subpart 2804.9) Added 14094

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1501.670–1 Removed 6288
1501.670–2 Removed 6288
1501.670–3 Removed 6288
1501.670–4 Removed 6288
1501.670–5 Removed 6288
1501.670–6 Removed 6288
1501.670–7 Removed 6288
1510.001 Added 42236
1510.002 Added 42236
1510.011–79 Added 42236
1513.570 Revised 32518
1516.301–70 Added; eff. 10-4-91 43711
1516.307 Existing text designated as (a); (b) added; eff. 10-4-91 43711
1516.404–276 (a) amended 6288
1537.200—1537.205 (Subpart 1537.2) Revised 5957

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1552.210–79 Added 42236
1552.216–74 Added; eff. 10-4-91 43711

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1631.205–41 Added 57496
1652.216–71 (b)(2)(ii) amended; (b)(2)(iv)(B) revised 57497

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1801.302–70 (b) amended 48738
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1804.671–4 (qqq) amended 8720
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1804.804–5 Revised 32115
1805.207 (b) amended 8721
1806.302–4 Added 8721
1806.302–470 Added 8721
1806.304 (a) amended 32115
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1807.170–1 (c) redesignated as (d); new (c) added 48740
1807.170–2 Amended 48740
1807.7102 (a) amended 32115
1808.304–573 Revised 12458
1810.002 Text added 48740
1812.302 (b) amended 48740
1812.303–70 (c) amended 48740
1814.404–170 (b) introductory text amended 8721
1815.613–70 Amended 8721
1815.804—1815.872 (Subpart 1815.8) Revised 48740
1815.805–5 (b) revised 8721
1815.872 (c)(1) and (2) corrected 56691
1815.902—1815.971 (Subpart 1815.9) Revised 48743
1815.1003–4 (c) revised 48746
1817.204 (a) amended 48746
1819.170 (Subpart 1819.1) Removed 8721

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1819.705–4 Heading revised; existing text designated as (a); (b) added 48746
1819.7001—1819.7004 (Subpart 1819.70) Added 48746
1825.102 (b)(1) revised; (b)(2) redesignated as (b)(2)(ii) introductory text and republished; (b)(2)(i) added; (b)(3) removed 48747
(b)(1) correctly revised; (b)(2) correctly redesignated as (b)(2)(ii) introductory text; (b)(2)(i) correctly added; (b)(3) correctly removed 00000
Corrected 52213
1825.407 Removed 32115
1825.407–70 Removed 32115
1825.703 Amended 32115
1825.901 (Subpart 1825.9) Revised 48747
1825.903 Amended 12458
1825.7100 Revised 32115
1825.7101 Amended 32115
1825.7104 Introductory text revised 32115
1825.7105 Revised 32115
1825.7200 (Subpart 1825.72) Added 12458
1827.404 (e)(1) amended 12458
1827.406 (b)(1)(v) amended 12458
(b)(1)(iv) and (v) amended 48747
1828.311–2 Revised 12459
1832.402–1 Added 48747
1832.410–70 (b) removed; (c) and (d) redesignated as (b) and (c); new (c) revised 48747
1832.412–70 Added 48747
1832.501–1 Added; interim 63877
1832.503–4 Added; interim 63877
1832.702–70 (e) added 48747
1835.071 Revised 12459
1836.702 (Subpart 1836.7) Heading amended 8721
1837.110 Amended 48748
1839 Revised 32116
1839.7001 (b) corrected 38485
1839.7003–2 (a) introductory text corrected 38485
1842.202 Revised 32117
(b) amended 48748
1842.202–70 (a) revised 32118
1842.708 Added 12459
1842.708–70 Added 12459
1842.708–71 Added 12459

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1842.708–72 Added 12459
1842.7003 (c) revised 48748
1845.302–71 (b) amended 32119
1845.302–72 (b) amended 32119
1846.270 (a) revised 12459
1849.101–70 (a)(3) amended 12460
1849.102–70 (b) introductory text, (c) and (d) amended 8721
1852.208–70 Introductory text amended 12460
1852.208–71 Introductory text amended 12460
1852.208–72 Introductory text amended 12460
1852.208–73 Introductory text amended 12460
1852.208–74 Introductory text amended 12460
1852.208–75 Introductory text amended 12460
1852.208–76 Introductory text amended 12460
1852.208–77 Introductory text revised 12460
1852.208–78 Amended 12460
1852.208–79 Introductory text amended 12460
1852.208–80 Introductory text amended 32119
1852.208–81 Amended 32119
1852.210–70 Introductory text amended 12460
1852.210–75 Amended 12460
1852.215–79 Introductory text amended 12460
1852.216–76 Introductory text amended 12460
1852.216–83 Introductory text amended 12460
1852.219–72 Removed 8721
1852.219–76 Added 48748
(a) corrected 56691
1852.223–70 Introductory text amended 12460
1852.225–72 Introductory text amended 12460
Removed 32119
1852.225–74 Amended 32119
1852.225–75 Amended 32119
1852.232–70 Added; interim 63877
1852.232–76 Added 48748
1852.235–70 Amended 48748
1852.242–70 Amended 32119
1852.242–71 Introductory text amended 12460

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Chapter 18—Continued
1852.243–70 Introductory text revised 12460
1852.246–70 Heading revised; text amended 12460
1852.250–70 Introductory text amended 12460
1853.204–70 (l) revised 32119
1853.207 (a) and (b) amended 8721
(b) amended 48748
1853.227 Removed 48748

Chapter 19
Chapter 19 Temporary waiver 22661

Chapter 28
2801.603 (c) heading revised; (c)(2)(ii), (3)(ii) and (4)(ii) amended; (d) through (h) redesignated as (e) through (i); new (d) and (f)(3) added 26340
2801.7001–701—2801.7001–703 (Subpart 2801.70) Revised 37860
2803.408 (Subpart 2803.4) Heading added 26341
2803.502 (Subpart 2803.5) Heading added 26341
2804.903–70 (c) amended 26341
2805.503–70 (d) amended 26341
2806.302—2806.302–70 (Subpart 2806.3) Added 26341
2806.501 (a) amended 26341
2815.805–570 Revised 26341
2819.701—2819.702 (Subpart 2819.70) Added 26341
2870 (Subchapter I) Added 26342

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Chapter 16
1602.170–9 Amended; interim 14359
Regulation at 57 FR 14359 confirmed 54001
1605—1609 Designated as Subchapter B 54001
1609 Added; interim 14359
Regulation at 57 FR 14359 confirmed 54001
1632.170 Revised; interim 14360
Regulation at 57 FR 14360 confirmed 54001
1632.171 Revised; interim 14360
Regulation at 57 FR 14360 confirmed 54001
1632.172 Revised; interim 14360

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Chapter 16—Continued
Regulation at 57 FR 14360 confirmed 54001
1649.002–70 Revised 19387
1652.216–71 (c)(3)4 Amended; interim 14360
Regulation at 57 FR 14360 confirmed 54001
1652.232–70 Heading and introductory text revised; interim 14360
Regulation at 57 FR 14360 confirmed 54001
1652.232–71 Heading and introductory text revised; (d) amended; interim 14361
Regulation at 57 FR 14361 confirmed 54001
1652.249–70 Amended 19388

Chapter 18
1801.104–370 (a), (e), (f) and (g) amended 40852
(e) and (f) amended 58719
1801.270 Amended 40852
1801.370 (a)(1)(i), (ii) and (b) amended 832
(a)(1)(ii), (iii), (2)(i) and (b) revised 40852
(a)(1)(ii) and (b) amended 58719
1801.471 (a) revised 40852
1803.804 (a) amended 40853
1804.170 (b) amended 58719
1804.202 (a) amended 58719
1804.470–3 Existing text designated as (a); (b) added 30909
(a) amended 40853
1804.470–4 Existing text designated as (a) and amended; (b) added 30909
1804.601 Amended 40853
1804.671–4 (k) and (w) amended 40853
(ss) revised 58719
1804.671–6 (e) amended 40853
(d) revised 58719
1804.671–7 Introductory text amended 58719
1804.676 Amended 40853
1804.677 Added 3137
1804.677–1 Added 3137
(c) revised; interim 60737
1804.677–2 Added 3137
1804.677–3 Added 3137
1804.677–4 Added 3137
(b) revised; interim 60737
1804.677–5 Added 3138
1804.677–6 Added 3138

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(n)(2), (4) and (q) revised; interim 60738
1805.202 Revised 58719
1805.403–70 Amended 40853
1806.202–70 (a)(2)(i) and (3) amended 832
1806.203 Added 58719
1806.302–770 (a) and (c) amended 832
1806.303–1 (b) amended....40853
1806.304 (c) amended....832
1807.103 (a)(1)(ii) (C) through (G) redesignated as (a)(1)(ii)(D) through (H); (a)(1)(i)(B) redesignated as new (a)(1)(ii)(C); (b)(1)(ii)(B) (*3*) through (*7*) redesignated as (b)(1)(ii)(B)(*4*) through (*8*); (b)(1)(ii)(A)(*2*) redesignated as new (b)(1)(ii)(B)(*3*); new (a)(1)(i)(B) and new (b)(1)(ii)(A)(*2*) added....58719
1807.7102 (b)(2) (iii) through (vii) redesignated as (b)(2) (iv) through (viii); (b)(1)(ii) redesignated as new (b)(2)(iii); new (b)(1)(ii) added 58719
1807.7204 Amended 832
1807.7206 Amended 832
(b)(2) amended 40853
1808.303 (a) amended 40853
1808.304–571 Amended....40853
1808.305 (a) introductory text and (b) amended 40853
1808.307–70 Amended 40853
1809.104–70 Added; interim 8280
1809.105 Added 58720
1809.106–70 (d)(1), (2) and (3) amended....40853
1809.404 (c) added....40853
1809.506 Redesignated from 1809.507; (a) and (b) amended 58720
1809.507 Redesignated as 1809.506 58720
1809.508–2 Amended....58720
1812.104–70 (d) amended 832
1813.104 (a) revised 40853
1815.507 Removed....58720
1815.613–71 (b)(5)(ii)(A) amended 40853
1815.804–3 (a) through (d) redesignated as (b) through (e); new (a) added 40853
(d) amended 40854

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1815.807–72 (a) amended 40854
1815.808 (b) amended 832
(b) revised....40854
1815.970 (e) amended....832
1815.970–2 (d) amended 832
1815.970–3 (b) revised 40854
1816 Revised 832
1816.207–70 (a) amended 40854
1816.603–2 Correctly designated 4912
1817.7002–2 Amended 58720
1817.7002–3 Amended 58720
1819.505 (c) amended....40854
1822.101–1 (b) amended 40854
1822.101–4 Amended....40854
1822.302 Amended L40854
1822.403–4 Amended....40854
1822.404–3 Amended....40854
1822.406–2 Amended....40854
1822.406.8 Amended 40854
1822.406–9 Amended....40854
1822.406–11 Amended 40854
1822.604–2 Amended....40854
1822.608.4 Amended 40854
1822.1001 Amended 40854
1822.1003 Amended 40854
1822.1007 (a) and (b) amended 40854
1823.302 Heading revised; introductory text amended....836
1823.303–70 Amended 836
1823.370 Amended....836
1823.7002 (c) amended 836
1823.7004 (f) amended....40854
1825.402 Amended....40854
1825.402–70 Amended 40854
1825.403–70 Amended 40854
1825.901 (Subpart 1825.9) Revised....836
1825.1002—1825.1004 (Subpart 1825.10) Removed 40854
1825.7002 Amended 40855
1825.7003 Amended 40855
1825.7006 (a) and (c) amended 40855
1827.406 (b)(1)(v) revised 58720
1827.409 (i) added 58720
1827.670–2 Heading and text amended....40855
1828.106–1 Revised....58720
1828.202 (Subpart 1828.2) Added 58720
1830.7001—1830.7002–2 (Subpart 1830.70) Revised 836
1831 Revised 837
1831.205–70 Amended 40855
Amended 58720

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Chapter 18—Continued

1832.402—1832.412 (Subpart 1832.4) Revised 838
1832.503–4 Heading revised 40855
1832.503–470 Added 40855
1832.702—1832.705–270 (Subpart 1832.7) Revised 839
1832.903—1832.970 (Subpart 1832.9) Revised 839
1833.103 (b) amended 40855
1833.104 (a)(2) amended 40855
1833.211 Amended 40855
1833.211–70 Amended 40855
1833.214 Redesignated as 1833.215 58720
1833.215 Redesignated from 1833.214 58720
1834 Revised; interim 30910
1835.003–70 Amended 58720
1835.070 (a) amended 58720
1836.602–70 (b)(1) and (2) amended 40855
1836.602–71 (b) amended 40855
1837.205 (c) amended 40855
1837.205–70 (a) and (b) amended 40855
1837.7000—1837.7001–4 (Subpart 1837.70) Added 58720
1839.7000—1839.7007 (Subpart 1839.70) Revised 58721
1842.101 Amended 40855
1842.174 (b) amended 40855
1842.202 (c) revised 839
1842.202–70 (f) added 840
(d) amended 40855
(a)(6)(iii) amended 58725
1842.705–70 (b) revised and (c) added 840
1842.801 (Subpart 1842.8) Revised 840
1842.1008 Amended 840
1842.7101 (Subpart 1842.71) Added 840
1844.102 Revised 841
1844.102–71 Heading and (a) amended 841
1844.302–70 Revised 841
1844.302–71 Revised 842
1844.304–70 Added 842
1844.305 Added 842
1844.307–70 Added 842
1845.106–70 (e) added 40855
1845.302–1 (a) revised 58725
1845.302–73 Added 58725
1845.405 (b) amended 40855
1845.407 (a) amended 40855

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1845.608–6 Amended 40855
1845.610–2 Amended 40855
1845.7203 Amended 40855
1845.7205 (f)(1) and (i) amended 40855
1845.7213 (c)(1) amended 40855
1849.110 Heading revised 58725
1849.111–71 (a)(1) amended 40855
1851.102 (b) amended 40855
1851.103 Revised 40856
1852.000 Revised 40856
1852.101 Heading revised; existing text designated as (a); (b) and (c) added 40856
1852.204–70 Amended 40856, 58725
1852.204–76 Amended 30909
1852.204–77 Added 30909
1852.204–78 Added 30909
1852.208–83 Amended 40856
1852.216–72 Revised 842
1852.216–73 Revised 842
1852.216–74 Revised 842
1852.216–76 Revised 843
1852.216–79 Revised 843
1852.216–80 Revised 843
1852.216–81 Amended 40856
1852.216–82 Revised 843
1852.216–83 Revised 844
1852.216–84 Revised 844
1852.216–85 Revised 844
1852.216–86 Revised 844
1852.216–87 Amended 844
1852.223–73 Amended 40856
1852.228–70 Amended 40856
1852.228–76 Amended 40856
1852.231–70 Redesignated from 1852.232–80 and revised 844
1852.232–12 Redesignated from 1852.232–76 and revised 844
1852.232–70 Amended 40856
1852.232–75 Removed 844
1852.232–76 Redesignated as 1852.232–12 and revised 844
1852.232–80 Redesignated as 1852.231–70 and revised 844
1852.232–81 Amended 40856
1852.235–70 Revised 58725
1852.242–72 Amended 40856
1852.300—1852.301 (Subpart 1852.3) Added 40856
1853.103 Amended 40856
1853.204–70 Heading revised; (o) added 3139
Heading revised 58726
1853.215–2 Revised 844

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1853.242–70 (d) amended 844
(c) revised 40856
1870.103 Appendix I amended 40856
1870.303 Appendix I amended 3139
Appendix I amended 58726
Amended 40856

Chapter 20

Chapter 20 Established 29221
Chapter 20 Revised 61157

Chapter 24

2401 Authority citation revised 59787
2401.601–70 Revised 59787
2401.601–71 Revised 59787
2401.602–72 Removed; new 2401.602–72 redesignated from 2401.601–73 and revised 59787
2401.601–73 Redesignated as 2401.601–72; new 2401.601–73 redesignated from 2401.601–74 and revised 59787
2401.601–74 Redesignated as 2401.601–73 59787
2401.603–2 (c) revised 59787
2401.603–3 (b) amended 59787
2402 Authority citation revised 59787
2402.101 Amended 59787
2403 Authority citation revised 59788
2403.303–70 (Subpart 2403.3) Heading amended 59788
2403.670 Added 59788
2405 Authority citation revised 59788
2405.301 (Subpart 2405.3) Added 59788
2406 Authority citation revised 59788
2406.304–70 Removed; new 2406.304–70 redesignated from 2406.304–71 59788
2406.304–71 Redesignated as 2406.304–70; new 2406.304–71 redesignated from 2406.304–72; (c) revised 59788
2406.304–72 Redesignated as 2406.304–71 59788
2409 Authority citation revised 59788
2409.501 Removed 59788
2409.502 Amended 59788
2409.503 Added 59788
2409.504 Introductory text revised 59788

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2413 Authority citation revised 59788
2413.505–2 (b) revised 59788
2414 Authority citation revised 59788
2414.406–3 Revised 59788
2415 Authority citation revised 59788
2415.407 (a) revised 59788
2415.604 Revised 59789
2415.608 (a) revised 59789
2415.611 Removed 59789
2415.611–70 Removed 59789
2415.612 Redesignated from 2415.613 and revised 59787
2415.612–70 Redesignated from 2415.613–70 and revised 59789
2415.613 Redesignated as 2415.612; new 2415.613 added 59789
2415.613–70 Redesignated as 2415.612–70; new 2415.613–70 added 59789
2415.613–71 Removed; new 2415.613–71 added 59789
2415.613–72 Added 59789
2416 Authority citation revised 59790
2416.504 Revised 59790
2419 Authority citation revised 59790
2419.708 (Subpart 2419.7) Added 59790
2425 Added 59790
2426 Authority citation added 59790
2426.201 Nomenclature change 59790
2428 Authority citation revised 59790
2428.203 Redesignated as 2428.204 59790
2428.203–70 Redesignated as 2428.204–70 59790
2428.204 Redesignated from 2428.203 59790
2428.204–70 Redesignated from 2428.203–70 59790
2432 Authority citation revised 59790
2432.402 Revised 59790
2432.906 Added 59790
2433 Authority citation revised 59790
2433.103 Revised 59790
2433.103–70 Removed; new 2433.103–70 redesignated from 2433.103–71 59790

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2433.103–71 Redesignated as 2433.103–70 59790
2433.104 (f) redesignated as (g) 59790
2433.104–70 Removed 59790
2436 Authority citation revised 59790
2436.602–2 (a) amended 59790
(3) added 59791
2436.602–4 Revised 59791
2436.602–5 Amended 59791
2437 Authority citation revised 59791
2437.110 (g) and (h) added 59791
2437.205 (Subpart 2437.2) Heading revised 59791
2437.205 (b)(6) amended 59791
2446 Authority citation revised 59791
2446.710 (Subpart 2446.7) Added 59791
2452 Authority citation revised 59791
2452.203–70 Added 59791
2452.203–71 Added (OMB number) 59791
2452.215–70 Amended (OMB number) 59791
2452.215–71 Amended 59792
2452.216–75 Introductory text revised 59792
2452.219–70 Added 59792
2452.237–76 Added (OMB number) 59793
2452.237–77 Added 59793

Chapter 25

2509 (Subchapter B) Added 34881
2527.7001 Revised 34882
2527.7002 Revised 34882

Chapter 28

2801.270—2801.270–4 (Subpart 2801.2) Added 24555
2801.2801.603(f)(1)introductory text revised; (f)(3)(v) added; (h) removed; (i) redesignated (h) 24555
2803.101–3—2803.104–12 (Subpart 2803.1) Revised 24556
2803.804 (Subpart 2803.8) Added 24556
2804.601 (b) revised 24557
2804.803–70 (c) added 24557
2804.7000 (Subpart 2804.70) Added 24557

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2805.201–70 (Subpart 2805.2) Added 24557
2805.302–70 (Subpart 2805.3) Added 24557
2806.303–2 Added 24557
2806.304 Added 24557
2807.103 Revised 24558
2810.001 Added 24558
2810.002 Added 24558
2813.7001—2813.7002 (Subpart 2813.70) Added 24558
2817.200 (Subpart 2817.2) Added 24559
2833.105–70 (Subpart 2833.1) Added 24559
2834.002–70 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e) 24559

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Chapter 15

1515.407 (a)(2) revised 45844, 45486
1552.215–73 Amended 45844, 45486
1552.215–74 Amended 45846

Chapter 18

Chapter 18 Nomenclature change 51136
1801.104–370 (f) amended 51136
1801.105 (a) revised (OMB numbers) 51136
1801.370 (a)(1)(ii) revised 51136
(a)(2)(i), (5) and (6) amended; (b) revised 51137
1801.602–3 (b) revised 51137
1801.603–2 (d)(2) amended 51137
1803.705 (b) amended 51137
1803.7001 (b) amended 51137
1804.470–1 Revised 51019
1804.470–2 Revised 51019
1804.470–3 Revised 51019
1804.470–4 Revised 51019
1804.603 Removed 51137
1804.671–4 (n) table amended 51137
1804.7005 Amended 51137
1804.7102–4 (a) table amended 51137
1804.7103–2 Table amended 51137
1804.7202 Heading amended 51137
1804.7203 (b) amended 51137
1805.202 Existing text designated as (a); (b) added; interim 69246
1805.207 (a) table amended 51137
(c) added 59188

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1805.303–71 (b)(1) introductory text amended 51137
1807.103 (a)(1) revised 48975
(b)(1)(i)(A)(*2*) removed; (b)(1)(i)(A)(*3*) and (*4*) redesignated as (b)(1)(i)(A)(*2*) and (*3*) and (b)(1)(i)(B)(*3*) through (*7*) redesignated as (b)(1)(i)(B)(*4*) through (*8*); new (b)(1)(B)(*3*) added 51137
(b)(1)(i)(A)(*3*) and (*4*) amended 51138
(a)(1) and (b) revised; interim 61629
1807.170-1 (a) revised; interim 58792
(b)(11) amended; (d)(1)(i) revised; interim 61630
1807.170-4 Added; interim 61630
1807.7102 (b)(1)(iv) amended 51138
(a) amended; interim 61630
1807.7103-1 (b) amended; interim 61630
1807.7103-2 (a) amended; interim 61630
1807.7104 (b) heading amended 51138
1807.7105 (b)(1) amended 51138
Removed; new 1807.7105 redesignated from 1807.7106 and revised; interim 61630
1807.7106 (b) and (c) amended 51138
Redesignated as 1807.7105; new 1807.7106 redesignated from 1807.7107; interim 61630
1807.7107 Redesignated as 1807.7106; interim 61630
1808.002–71 (c) amended 51138
1808.307–71 Amended 51138
1808.802—1808.870 (Subpart 1808.8) Revised; interim 47219
1809.408 Added 51138
1809.507 Redesignated from 1809.508; heading revised 51138
1809.507–2 Redesignated from 1809.508–2 51138
1809.508 Redesignated as 1809.507 51138
1809.508–2 Redesignated as 1809.507–2 51138
1812.103 Added 51138
1812.104 Text added 51138
1813.7104 (c) and (d) revised 51138
1814.407 Added 51138
1814.407–1 Added 51138
1815.406 (c) and (d) added; interim 61630

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1815.407-70 (j) and (k) added; interim 61631
1815.413–2 Revised 51139
1815.611 Added 54299
1815.613-71 (b)(5)(i) revised; (b)(6) removed; (b)(*7*) and (8) redesignated as (b)(6) and (7) 54299
(b)(4) revised; interim 61631
1815.613-72 Heading revised; text redesignated as (a); (b) added; interim 61631
1815.805–5 Revised 51140
1815.1002 Added 51141
1816.404 Revised 52446
1816.405 Revised 52449
1819.705–4 (b) revised 42879
1819.708–70 Heading revised; existing text designated as (a); (b) added 51141
1828.371 Revised; interim 54050
1828.373 Removed; interim 54051
1832.402–1 Amended 51141
1832.402–2 Added 4086
1832.906 Added 48615
1832.7001—1832.7008 (Subpart 1832.70) Added 4086
1833.211 Revised; interim 44462
Regulation at 58 FR 44462 confirmed 53138
1833.211–70 Revised; interim 44462
Regulation at 58 FR 44462 confirmed 53138
1834 Revised; interim 58792
1834.005-1 (b)(3) corrected 68687
1836.304 Added 51141
1837.110 Revised 44463
1837.170 Revised 44463
1839.7003-4 (a)(6) added 59189
1839.7008 Added 59189
1842.172 Revised 51141
1842.174 (b) introductory text amended 51141
1842.202–70 (a)(3) introductory text and (d) amended 51141
1842.1203 (a) amended 51141
1843.205–70 (a) amended 51141
1845.106–70 (e) introductory text amended 51141
1845.405 (b) and (c) introductory text amended 51141
1845.407 (a) introductory text amended 51141
1845.608–6 Amended 51141
1845.7101–1 (e) introductory text amended 51141

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1801.105–1 Redesignated from 1801.104–1; (b) amended 47704
1801.105–2 Redesignated from 1801.104–2 47704
1801.105–3 Redesignated from 1801.104–3 47704
1801.105–370 Redesignated from 1801.104–370 47704
1801.106 Redesignated from 1801.105 47704
1801.270—1801.272 (Subpart 1801.2) Revised 40509
1801.301 (b) introductory text, (1) introductory text and (2)(i) revised 40510
1801.303 Revised 40510
1801.400 Revised 40510
1801.401 Removed 40510
1801.402 Removed 40510
1801.403 Removed 40510
1801.404 Removed 40510
1801.405 Removed 40510
1801.470 Removed 40510
1801.471 (a) and (b)(2) revised; (c) added 40510
1801.602–3 (a) revised 47704

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1801.603–2 (d)(1) introductory text amended 16059
Revised 47704
1801.603–3 Removed 47705
1801.603–4 Removed 47705
1801.670 Revised 47705
1801.703 Removed 47705
1801.704 Amended 47705
1801.770 Added 47705
1802.101 (b) amended 18033
1803.104–5 (c) introductory text revised; (c)(11) added 47099
1803.104–11 (b) and (c) amended 40510
1803.303 (a) introductory text and (c) amended 40510
1803.806 Amended 40510
1804.601 Revised 47705
1804.671 Revised 47705
1804.671–1 Revised 47705
1804.671–2 Removed 47705
1804.671–4 Revised 47705
1804.671–6 Revised 47712
1804.672 Removed 47712
1804.674 Removed 47712
1804.676 Amended 47712
1804.802—1804.805–70 (Subpart 1804.8) Heading revised 16059
1804.805 Heading revised 16059
1805.303–70 Redesignated as 1805.303–71; new 1805.303–70 added 14378
1805.303–71 Redesignated as 1805.303–72; new 1805.303–71 redesignated from 1805.303–70 14378
(a)(1)(iv) amended 14379
1805.303–72 Redesignated from 1805.303–71 14378
1806.303–1 (b) amended 16059
1808.002–71 Removed 16059
1808.002–76 Removed 16059
1808.301—1808.309 (Subpart 1808.3) Removed 16059
1808.605 (c) amended 40511
1808.705—1808.705–1 (Subpart 1808.7) Heading revised 16059
1808.705–1 (b) amended 16059
1809.104–70 Removed 40511
1809.404 (a) and (c) amended 40511
1809.405 Amended 40511
1809.405–1 (b) amended 40511
1809.405–2 Amended 40511
1809.406–3 Amended 40511
1809.407–3 Amended 40511
1809.408 (d) and (e) amended 40511

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1809.470–1 Introductory text amended 40511
1809.470–3 Amended 40511
1810 Revised 40511
1812.103 Amended 47712
1812.302 (a) amended 40512
(b) revised 47712
1812.303–70 (e) amended 40512
1813.402 Redesignated from 1813.403 47712
1813.402–70 Redesignated from 1813.403–70; (b) amended 47712
1813.403 Redesignated as 1813.402; new 1813.403 redesignated from 1813.404; (b)(5) amended 47712
1813.403–70 Redesignated as 1813.402–70 47712
1813.404 Redesignated as 1813.403; new 1813.404 redesignated from 1813.405; (e)(3) amended 47712
1813.405 Redesignated as 1813.404 47712
1813.505–1 Redesignated from 1813.505–2; heading revised 47712
1813.505–2 Redesignated as 1813.505–1 47712
1813.7003 (a) amended 47712
1813.7104 (a) amended 16059
1814.201–2 Removed 40512
1814.201–5 (a) revised; (b) removed; (c) redesignated as (b) 40512
1814.201–670 (b) and (c) amended; (d) revised 40513
1814.404–1 Revised 40513
1814.404–170 Removed 40513
1814.406 Redesignated as 1814.407 47712
1814.406–3 (a) revised; (b) amended 40513
Redesignated as 1814.407–3 47712
1814.406–4 Introductory text amended; (c) removed 40513
Redesignated as 1814.407–4 47712
1814.407 Redesignated as 1814.408; new 1814.407 redesignated from 1814.406 47712
1814.407–1 (a) and (f) revised; (b) through (e) and (g) amended 40513
Redesignated as 1814.408–1 47712
1814.407–3 Redesignated from 1814.406–3; (a), (b) and (c) amended 47712
1814.407–4 Redesignated from 1814.406–4 and amended 47712

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1814.408 Redesignated from 1814.407 47712
1814.408–1 Redesignated from 1814.407–1 47712
1815.102—1815.170 (Subpart 1815.1) Removed 40513
1815.405–1 Revised 40513
1815.405–70 Removed 40513
1815.405–71 (b) introductory text amended 40513
1815.406 (b) revised 40513
1815.406–5 (b)(1) removed; (b)(2) through (8) redesignated as (b)(1) through (7); new (b)(8) added 40513
1815.412 Introductory text revised 40514
Heading revised 47712
1815.413 (b) amended 47712
1815.502 Amended 40514
1815.503 (a), (b) and (c) amended 40514
1815.504–70 Amended 40514
1815.506 (a)(3) removed 40514
1815.608–72 Added 16064
1815.611 Revised 40514
1815.613–71 (a) designation, heading and (b) removed 40514
1815.804 Heading revised 53879
Heading correctly revised 56125
1815.804–1 Redesignated from 1815.804–3; heading, (a)(1), (2), (b), (c), (d) and (e)(3) revised; (a)(3)(i) amended 53879
Heading, (a), (b) and (c) correctly revised 56125
1815.804–2 Added 53879
(b) correctly added 56126
1815.804–3 Redesignated as 1815.804–1 53879
1815.807–70 (d)(1) and (2) amended 53879
1815.807–71 Amended 53880
1815.807–72 (a) revised 53880
1815.870–1 (a) revised; (b) amended 53880
1815.871 Removed 16059
1815.872 Removed 16059
1815.970–2 (f)(1) heading removed 53880
1815.970–3 (a) amended; (b) revised; (c) removed 53880
1815.1002 Redesignated as 1815.1003 47712

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1815.1003 Redesignated as 1815.1004; new 1815.1003 redesignated from 1815.1002 and amended 47712
1815.1003–1 Redesignated as 1815.1004–1 47712
1815.1003–2 (a) introductory text revised 40514
Redesignated as 1815.1004–2 47712
1815.1003–3 Redesignated as 1815.1004–3 47712
1815.1003–4 Redesignated as 1815.1004–4 47712
1815.1004 Redesignated from 1815.1003 47712
1815.1004–1 Redesignated from 1815.1003–1 47712
1815.1004–2 Redesignated from 1815.1003–2; (a) amended 47712
1815.1004–3 Redesignated from 1815.1003–3 47712
1815.1004–4 Redesignated from 1815.1003–4 47712
1815.7001—1815.7002 (Subpart 1815.70) Added 47100
1816.203–4 (c) amended 53880
1816.301 Removed 16059
1816.301–3 Removed 16059
1816.403 Removed 16059
1819.502–3 (a)(1) revised 47712
1819.708–70 (b) amended 53881
1819.7201—1819.7219 (Subpart 1819.72) Added 15500
1822.103–4 Revised 52121
1822.406–13 Amended 40514
1822.804–2 Amended 40514
1822.807 Amended 40514
1825.402–70 Removed 37599
1825.901 Revised 47713
1825.7002 Revised 37599
1825.7003 Removed; new 1825.7003 redesignated from 1825.7004 and revised 37599
1825.7004 Redesignated as 1825.7003; new 1825.7004 redesignated from 1825.7005 and revised 37599
1825.7005 Redesignated as 1825.7004 37599
1825.7006 Removed 37599
1825.7200 Amended 40514
1827.372 (a)(2), (3), (b)(1), (i)(1) and (2) amended 40514

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1827.373 (f) removed; (g) redesignated as (f); (a)(1), (b) introductory text, (c) introductory text, (1), (2), (d) and new (f) amended 40514
1827.374–1 (a), (b) and (c) amended; (f) revised 40514
(g) amended 40515
1827.374–3 (a) amended 40515
1827.375–1 (b)(1), (2)(ii) and (4) amended 40515
1827.375–2 (a)(1) introductory text and (2) amended 40515
1827.375–3 (a) introductory text, (e)(3) and (f) amended 40515
1827.404 (e)(1), (3) and (g) amended 40515
(d)(1) and (e)(1) revised; (e)(4) and (5) added 47311
1827.405 (a)(1) and (3) amended 40515
(c) added 47312
1827.406 (a), (b)(1) introductory text, (i), (ii), (iii), (v) and (2) amended 40515
1827.409 (a), (b) and (e) through (i) amended 40515
1827.670–1 Amended 40515
1829.203 (a) amended 40515
1831.101 (Subpart 1831.1) Removed 40515
1831.205–32 Revised 29505
1831.205–70 Revised 29505
1832.402 (a)(1) amended 16059
1833.103 (c) amended 40515
1833.104 (a) revised 40515
(b)(1), (c)(1), (2), (d) and (e) amended 40516
1834.005–1 (k) removed; (l) redesignated as (k) 47713
1835.003 (b) removed; (c) redesignated as (b) and amended 40516
1835.003–70 Removed 40516
1835.003–71 Removed 40516
1835.015 (b) amended 40516
1835.016–70 Revised 40516
(e)(9) amended 47713
1835.070 (b) amended 40518
1835.071 Removed 40518
1836.304 Amended 47713
1836.600 Removed 16059
1836.600–70 Removed 16059
1836.602–2 Revised 16059
1836.602–4 Revised 16060
1836.602–5 Revised 16060

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Heading revised 47713
1836.602–70 (b)(1) amended 16060
1836.602–71 (a)(1) revised; (a)(3) amended 16060
1837 Technical correction 11634
1837.000 Removed 40518
1837.102 Added 16064
1837.110 Revised 16065
1837.170 Revised 60916
1839.7001 (a) amended; (b) revised 40518
1839.7003–1 (a)(2) and (c) revised 40518
1839.7003–2 (b) introductory text revised; (b)(1) through (4) removed; (b)(5), (6) and (7) redesignated as (b)(1), (2) and (3); new (b)(1) amended 40518
1839.7003–3 (e) revised 40518
1839.7003–4 (a) introductory text revised; (a)(1) through (5) removed; (a)(6) and (b) redesignated as (b) and (c) 40518
1839.7003–5 Revised 40518
1839.7003–6 (b) and (c) revised 40519
1839.7004 Amended 40519
1839.7006 (a) and (b) amended; (d) removed; (e), (f) and (g) redesignated as (d), (e) and (f); new (d) and new (e) revised 40519
1841 Added 16060
1842.101 Amended 40519
1842.202–70 (d) amended 16062
1842.7301 (Subpart 1842.73) Added 16062
1845.106–70 (e) amended 16063
1845.405 (b) amended 16063
1845.407 (a) amended 16063
1845.608–6 Amended 16063
1845.610–2 Amended 16063
1845.7203 Amended 16063
1845.7205 (f)(1) and (i) amended 16063
1845.7213 (c)(1) introductory text amended 16063
1846.470–1 Amended 40519
1846.470–2 (b) amended 40519
1846.670–1 (a), (b)(1) and (c) revised 40519
1846.670–2 (a)(3) revised; (a)(4) removed 40519
1846.670–4 (c) revised 40519
1846.670–5 Revised 40519
1846.671 (a) revised 40520

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1846.672–1 (a)(1), (r)(1)(i), (2) introductory text, (ii) and (w) introductory text amended; (a)(4), (b), (c), (d)(1) introductory text, (ii), (g)(1) and (h)(1) revised 40520
1846.672–3 Introductory text revised 40520
1846.672–5 Introductory text revised 40520
1846.703–70 (b) and (c) revised 40520
1849.102–70 (a) revised; (b) introductory text, (c) and (d) amended 40520
1849.111–71 (a)(1) and (2)(ii) amended 40520
1849.111–72 Amended 40520
1849.111–74 Amended 40520
1849.603–70 (d) introductory text, (1) and (2) revised 40520
1850.202 Revised 18033
1850.402 Removed 18033
1850.403–1 Revised 18033
1850.403–2 Revised 18033
1850.403–3 Removed 18034
1850.403–70 Removed 18034
1850.403–370 Removed 18034
1851.102 (b) amended 16063
1852 Technical correction 22095
1852.204–70 Removed 47713
1852.208–70 Removed 16063
1852.208–71 Removed 16063
1852.208–72 Removed 16063
1852.208–73 Removed 16063
1852.208–74 Removed 16063
1852.208–75 Redesignated as 1852.241–70 16063
1852.208–76 Removed 16063
1852.208–77 Removed 16063
1852.208–78 Removed 16063
1852.208–79 Removed 16063
1852.208–80 Removed 16063
1852.208–83 Removed 16063
1852.215–70 Amended 53880
1852.215–84 Added 47100
1852.219–75 Amended 53881
1852.219–77 Added 15503
1852.219–78 Added 15503
1852.219–79 Added 15503
1852.227–14 Amended 47312
1852.227–15 Added 47312
1852.227–70 Amended 40521
1852.231–70 Revised 29505
1852.237–72 Added 16065

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1852.241–70 Redesignated from 1852.208–75; introductory text revised 16063
1852.243–70 Amended 53880
1852.246–72 Amended 40521
1852.250–70 Removed 18034
1852.250–72 Removed 18034
1853.101 Amended 40521
1853.103 Amended 40521
1853.104 Amended 40521
1853.105 Revised 40521
1853.108 Amended 40521
1853.204–70 Revised 40521
1853.216–70 Revised 40521
1853.242–70 Heading revised; (g) added 40521
1853.242–71 Removed 40521
Redesignated from 1853.242–72 40522
1853.242–72 Redesignated as 1853.242–71 40522
1853.249 (b) revised 40522
1870.000 Revised 40522
1870.101—1870.102 (Subpart 1870.1) Revised 40522
1870.102 appendix A amended 53880
1870.102 appendix I amended 47713
1870.103 appendix I amended 16063
1870.202 (b) revised 40535
1870.203 Revised 40535
1870.303 appendix I amended 47713
1871.000 Revised; eff. 10–1–95 through 6–30–97 51368
1871.101 Amended; eff. 10–1–95 through 6–30–97 51368
1871.103 Revised; eff. 10–1–95 through 6–30–97 51368
1871.104 (a) revised; (g) and (h) added; eff. 10–1–95 through 6–30–97 51369
1871.105 (d), (e) and (f) revised; eff. 10–1–95 through 6–30–97 51369
1871.301 Amended; eff. 10–1–95 through 6–30–97 51369
1871.302 Revised; eff. 10–1–95 through 6–30–97 51369
1871.401 Amended; eff. 10–1–95 through 6–30–97 51369
1871.401–1 (b)(2) amended; eff. 10–1–95 through 6–30–97 51369
1871.401–5 (b)(1) revised; eff. 10–1–95 through 6–30–97 51369
1871.401–6 Added; eff. 10–1–95 through 6–30–97 51369
1871.406 Heading revised; eff. 10–1–95 through 6–30–97 51369

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1871.406–1 Revised; eff. 10–1–95 through 6–30–97 51370
1871.406–3 Revised; eff. 10–1–95 through 6–30–97 51370
1871.406–4 Revised; eff. 10–1–95 through 6–30–97 51370
1871.505 Revised; eff. 10–1–95 through 6–30–97 51370
1871.506 Revised; eff. 10–1–95 through 6–30–97 51370
1871.605 (a)(1) amended; eff. 10–1–95 through 6–30–97 51370

Chapter 24

2401.601—2401.603–3 (Subpart 2401.6) Heading revised; interim; eff. 10–5–95 46154
2401.601–73 Revised; interim; eff. 10–5–95 46154
2401.602–3 Revised; interim; eff. 10–5–95 46154
2402.101 Amended; interim; eff. 10–5–95 46154
2404 Authority citation revised 46154
2404.805 Redesignated from 2404.805–1; heading and (a) revised; interim; eff. 10–5–95 46155
2404.805–1 (Subpart 2404.8) Heading revised; interim; eff. 10–5–95 46155
2404.805–1 Redesignated as 2404.805; interim; eff. 10–5–95 46155
2405 Authority citation revised 46155
2405.301 (Subpart 2405.3) Removed; interim; eff. 10–5–95 46155
2406 Authority citation revised 46155
2406.304–70 Revised; interim; eff. 10–5–95 46155
2406.304–71 Removed; interim; eff. 10–5–95 46155
2406.501 Revised; interim; eff. 10–5–95 46155
2413 Heading revised; interim; eff. 10–5–95 46155
2413.106–2 Redesignated from 2413.107 and revised; interim; eff. 10–5–95 46155
2413.107 Redesignated as 2413.106–2; interim; eff. 10–5–95 46155

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2413.402 Redesignated from 2413.403 and revised; interim; eff. 10–5–95 46155
2413.403 Redesignated as 2413.402; new 2413.403 redesignated from 2413.404 and revised; interim; eff. 10–5–95 46155
2413.404 Redesignated as 2413.403; interim; eff. 10–5–95 46155
2413.505–1 Redesignated from 2413.505–2 and revised; interim; eff. 10–5–95 46155
2413.505–2 Redesignated as 2413.505–1; interim; eff. 10–5–95 46155
2413.601 (Subpart 2413.6) Added; interim; eff. 10–5–95 46155
2414 Authority citation revised 46155
2414.406–4 Revised; interim; eff. 10–5–95 46155
2415 Authority citation revised 46155
2415.407 (b) and (c) added; interim; eff. 10–5–95 46155
2415.408 Removed; interim; eff. 10–5–95 46156
2415.411 Removed; interim; eff. 10–5–95 46156
2415.411–70 Removed; interim; eff. 10–5–95 46156
2415.604 Revised; interim; eff. 10–5–95 46156
2415.605 Revised; interim; eff. 10–5–95 46156
2415.608 (a) revised; interim; eff. 10–5–95 46156
2415.609 Removed; interim; eff. 10–5–95 46156
2415.611 Added; interim; eff. 10–5–95 46156
2415.612 Removed; interim; eff. 10–5–95 46156
2415.612–70 Removed; interim; eff. 10–5–95 46156
2415.613 (a) revised; interim; eff. 10–5–95 46156
2415.613–70 Revised; interim; eff. 10–5–95 46156
2415.613–72 (a) revised; interim; eff. 10–5–95 46156
2416 Authority citation revised 46156

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2416.301—2416.301–3 (Subpart 2416.3) Removed; interim; eff. 10–5–95 46156
2426.101 Removed; interim; eff. 10–5–95 46156
2426.101—2426.103 (Subpart 2426.1) Heading redesignated as Subpart 2426.70 heading; interim; eff. 10–5–95 46156
2426.102 Removed; interim; eff. 10–5–95 46156
2426.103 Removed; interim; eff. 10–5–95 46156
2426.202—2426.202–70 (Subpart 2426.2) Removed; interim; eff. 10–5–95 46156
2426.701 Added; interim; eff. 10–5–95 46156
2426.702 Added; interim; eff. 10–5–95 46157
2426.703 Added; interim; eff. 10–5–95 46157
2428.204—2428–204–70 (Subpart 2428.2) Removed; interim; eff. 10–5–95 46157
2429 Authority citation revised 46157
2429.101 Revised; interim; eff. 10–5–95 46157
2432.402 Revised; interim; eff. 10–5–95 46157
2432.906 Revised; interim; eff. 10–5–95 46157
2432.908 Revised; interim; eff. 10–5–95 46157
2436 Authority citation revised 46157
2436.602–2 (a) introductory text, (2) and (c) revised; (a)(3) removed; interim; eff. 10–5–95 46157
2436.602–4 Revised; interim; eff. 10–5–95 46158
2437.205 Revised; interim; eff. 10–5–95 46158
2452.215–70 Revised; interim; eff. 10–5–95 46158
2452.219–70 Amended; heading revised; interim; eff. 10–5–95 46159
2452.226–70 Revised; interim; eff. 10–5–95 46159
2452.232–70 Amended; interim; eff. 10–5–95 46159
2452.232–71 Amended; interim; eff. 10–5–95 46159

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2452.237–77 Amended; interim; eff. 10–5–95 46159
2453 Authority citation revised 46159
2453.213–71 Revised; interim; eff. 10–5–95 46159
2453.213–72 Removed; interim; eff. 10–5–95 46159
2453.237–70 Added; interim; eff. 10–5–95 46159

Chapter 28

2801.000 Removed 40108
2801.270–2 Removed 40108
2801.270–4 Revised 40108
2801.304 (b) revised 40108
2801.403 Revised 40108
2801.470 Revised 40109
2801.601—2801.603–4 (Subpart 2801.6) Heading revised 16065
2801.601 (d) revised 16065
2801.602–3 Revised 40109
2801.602–70 (f) removed 40109
2801.603 Revised 16066
2801.670 Added 16066
2801.7001–702 (d)(1) and (g) revised 40109
2802.000 Removed 40109
2802.102 (f) through (m) redesignated as (g) through (n); new (f) added; new (g) revised 40109
2804.000 Removed 40109
2804.800—2804.803–70 (Subpart 2804.8) Removed 40109
2804.900 Removed 40109
2804.7000 (Subpart 2804.70) Removed 40109
2805.101 (Subpart 2805.1) Removed 40109
2805.502 (a) revised 40109
2807.7000 Removed 40109
2808.000 Removed 40109
2808.102–80 (Subpart 2808.1) Removed 40109
2809.400 Removed 40109
2809.403 Removed 40109
2809.405–2 Removed 40109
2809.471 Removed 40109
2810.000 Removed 40109
2812.000 Removed 40109
2812.170 Revised 40109
2813.570 Removed 40110
2813.7002 (c) revised 40110
2814.000 Removed 40110
2814.401 Removed 40110
2814.402 Removed 40110

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2815.405 Revised 40110
2815.804–370 Revised 40110
2816.000 Removed 40110
2816.601 Added 40110
2816.602 Added 40110
2816.603–370 Added 40110
2817.200 (Subpart 2817.2) Removed 40110
2828.105 Removed 40110
2829.000 Removed 40110
2830.201–270 Revised 40110
2832.000 Removed 40110
2832.400 Removed 40110
2832.7000 Removed 40110
2833.000 Removed 40110
2835.000 Removed 401100
2845.000 Removed 40110
2852.000 Removed 40111
2852.100 Removed 40111
2852.200 Removed 40111
2870.000 Removed 40111

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Chapter 15

1501.370 Amended 29316
1501.602–3 (d)(1)(v) amended 57337
1503.905 (Subpart 1503.9) Added 57337
1505.405 (Subpart 1505.4) Removed 55118
1506.371 Removed 47065
1509.404 Revised 57337
1509.503 Amended 29316
1509.507–1 (b) amended 57337
1509.507–2 (a), (b) and (c) amended; (d) revised 57337
1510 Removed 57337
1510.011–71 Removed 29316
1510.011–72 Revised 29316
1510.011–73 Removed 29316
1510.011–74 Removed 29316
1511 Added 57337
1512 Removed 57338
1513 Revised 57338
1514.201–6 (a) and (b) designation removed 55118
1515.407 (a)(1) removed; (a)(2) and (3) redesignated as (a)(1) and (2) 47065
1515.604 (a), (c) and (d) revised 47065
1515.604–70 (c) added 47066

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1515.605 (a) and (b) revised; (c) added 47066
1515.608 (e) amended 29316
(a)(1), (b)(1)(ii) and (2)(i) revised; (a)(3) and (b)(3) added; (c) removed; (d) and (e) redesignated as (c) and (d) 47066
1515.609 (c) revised 47067
1515.611 Revised 47067
1515.612 (a)(1)(iii), (iv) and (v) revised; (c) added 47067
1516.303 Added 14504
1516.303–71 Added 14504
1516.303–72 Added 14504
1516.303–73 Added 14504
1516.303–74 Added 14505
1516.303–75 Added 14505
1516.303–76 Added 14505
1516.303–77 Added 14505
1516.307 (c) amended 57338
1516.307 (c) added 14505
1516.370 Added 14505
1519 Heading amended; nomenclature change 57338
1519.201–1 Redesignated as 1519.201–71 57339
1519.201–2 Redesignated as 1519.201–72 57339
1519.201–71 Redesignated from 1519.201–1 57339
1519.201–72 Redesignated from 1519.201–2; (b) and (c)(3) amended 57339
1523 Heading revised 14506
1523.7000—1523.7003 (Subpart 1523.70) Added 14506
1527.409 Amended 57339
1528 Removed 29493
1532.170 (b) revised; (c) removed 29316
1532.201 (Subpart 1532.2) Added 57339
1532.908 Revised 29317
1533.103–70 Removed 57339
1534 Removed 47065
1535.007 Revised 14264
1535.007–70 (b) and (c) revised; (d), (e) and (f) added 14265
(c) amended 57339
1536.303—1536.303–70 (Subpart 1536.3) Removed 47065
1536.570 Removed 47065
1537.200—1537.205 (Subpart 1537.2) Removed 55118
1542.703–2 Added 57339

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1542.705–1 Removed 47065
1545.502 (Subpart 1545.5) Removed 47065
1548.102 (Subpart 1548.1) Removed 55118
1552.209–71 (c) revised 57339
1552.209–75 Redesignated from 1552.210–80 57339
1552.210–70 Redesignated as 1552.211–70 57339
1552.210–71 Removed 29317
1552.210–72 Revised 29317
Redesignated as 1552.211–72 57339
1552.210–73 Removed 29317
1552.210–74 Removed 29317
1552.210–75 Redesignated as 1552.211–75 57339
1552.210–76 Redesignated as 1552.211–76 57339
1552.210–77 Redesignated as 1552.211–77 57339
1552.210–78 Redesignated as 1552.211–78 57339
1552.210–79 (b), (c) and (d) revised; (e) and (f) removed 33689
Redesignated as 1552.211–79 57339
1552.210–80 Redesignated as 1552.209–75 57339
1552.211–70 Redesignated from 1552.210–70 57339
1552.211–72 Redesignated from 1552.210–72 57339
1552.211–73 Redesignated from 1552.212–70 57339
1552.211–74 Redesignated from 1552.212–71 57339
1552.211–75 Redesignated from 1552.210–75 57339
1552.211–76 Redesignated from 1552.210–76 57339
1552.211–77 Redesignated from 1552.210–77 57339
1552.211–78 Redesignated from 1552.210–78; amended 57339
1552.211–79 Redesignated from 1552.210–79 57339
1552.212–70 Redesignated as 1552.211–73 57339
1552.212–71 Redesignated as 1552.211–74 57339
1552.214–70 Removed 55118
1552.215–70 Revised 47067
Amended 57339
1552.215–71 Revised 47067
1552.215–72 Removed 47068

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1552.216–76 Added 14505
1552.228–70 Removed 29493
1552.228–71 Removed 29493
1552.228–72 Removed 29493
1552.228–73 Removed 29493
1552.232–70 Revised 29317
1552.235–72 Revised 14265
1552.235–73 Added 14265
1552.235–74 Added 14265
1552.235–75 Added 14265
1552.235–76 Added 14266
Amended 57339
1552.235–77 Added 14266
1552.235–78 Added 14266
1552.235–79 Added 14267
1552.236–71 Removed 47065
1552.239–103 Added 14507
1553.232–75 Revised 29318
1553.232–76 Removed 29318

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1604.7101 (Subpart 1604.71) Regulation at 60 FR 16057 confirmed 15198
1652.204–72 Revised 15198

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1801 Revised 40534
1802 Revised 40537
1803 Revised 40537
1804 Revised 40539
1805 Revised 40543
1806 Revised 40545
1807 Revised 47068
1808 Revised 47073
1809 Revised 47075
1810 Removed 47077
1811 Added 47078
1812 Revised 47079
1814 Revised 47079
1815 Revised; interim 52325
1815.413–2 Revised 5313
1815.970 (b) amended 5314
1815.7002 Amended 5314
1816 Revised; interim 52338
1816.505 Added 5314
1817 Revised 55753
1819 Heading revised 5314
1819.705–4—1819.708–70 (Subpart 1819.7) Heading revised 5314
1822 Revised 55755
1823 Revised 55757
1823.570—1823.570–4 (Subpart 1823.5) Added 7225
1823.7004 (c)(2), (3) and (4) revised 5314
1824 Revised 55758

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1825.400 Added 42395
1825.401 Added 6577
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1827.405 (c) revised 5314
1828 Revised 55765
1828.202 Revised 47081
1829 Revised 55767
1830 Revised 55767
1831 Revised 55768
1832 Revised 55768
1833 Revised 55771
1835.003 Revised 5314
1835.004 Added 47081
1837.204 Added 5314
1842.1305 (Subpart 1842.13) Added 47081
1843.7101—1843.7102 (Subpart 1843.71) Added 64823
1845.102–70 (a)(3) revised 47083
1845.106–70 (d) revised; (i) removed; (j) and (k) redesignated as (i) and (j) 47083
1845.301 Amended 47084
1845.407 Heading revised; introductory text, (a)(1) and (b) amended 47084
1845.501 Amended 47084
1845.502–1 Amended 47084
1845.502–71 (e) heading revised 47084
1845.505–14 Revised 47084
1845.7101 Amended 47084
1845.7101–1 Revised 47084
1845.7101–2 Revised 47085
1845.7101–3 Revised 47085
1845.7101–4 Revised 47085
1845.7101–5 Revised 47086
1845.7101–7 Removed 47086
1845.7101–8 Removed 47086
1845.7101–9 Removed 47086
1852.000 Revised 40547
1852.101—1852.104 (Subpart 1852.1) Revised 40547
1852.203–70 Removed 40548
1852.204–75 Revised 40548
1852.204–76 Revised 40548
1852.204–77 Removed 40548
1852.204–78 Removed 40548
1852.207–70 Removed 40548, 47081
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1852.209–70 Revised 40548
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1852.209–72 Revised 40548
1852.210–40 Removed 47081
1852.210–71 Removed 47081

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1852.210–72 Removed 47081
1852.210–75 Removed 47081
1852.211–70 Added 47081
1852.211–72 Added 47081
1852.211–74 Added 47081
1852.212–72 Removed 47081
1852.212–73 Removed 47081
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1852.216–86 Removed; interim 52346
1852.216–87 Revised; interim 52346
1852.216–88 Revised; interim 52347
1852.216–89 Revised; interim 52347
1852.222–71 Removed 55758
1852.223–70 Amended 5315
1852.223–72 Removed 55758
1852.223–73 Amended 55758
1852.223–74 Added 7226
1852.227–15 Redesignated as 1852.227–17 5315
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1852.228–71 Amended 55774

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1852.228–74 Removed 55774
1852.228–77 Removed 55774
1852.231–71 Removed 55774
1852.232–12 Removed 55774
1852.232–70 Removed 55774
1852.232–83 Removed 55774
1852.232–84 Removed 55774
1852.243–71 Added 64824
1852.245–73 Revised 47086
1852.245–78 Removed 47086
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1871 Revised 55758
1871.103 (b) revised 47082
1871.401–6 (a)(2) revised 47082

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Chapter 22 Removed 54590

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Chapter 23 Established; eff. 10–28–96 50738

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2401.102 Redesignated as 2401.103 19470
2401.103 Redesignated as 2401.104; new 2401.103 redesignated from 2401.102 19470
2401.104 Redesignated as 2401.105; new 2401.104 redesignated from 2401.103 19470
2401.104–2 Redesignated as 2401.105–2 19470
2401.105 Redesignated as 2401.106; new 2401.105 redesignated from 2401.104 19470
2401.105–2 Redesignated from 2401.104–2 19470
2401.106 Redesignated from 2401.105 19470
2401.601—2401.603–3 (Subpart 2401.6) Regulation at 60 FR 46154 confirmed 19470
2401.602–3 Regulation at 60 FR 46154 confirmed 19470
2401.673 Regulation at 60 FR 46154 confirmed 19470
2402.101 Regulation at 60 FR 46154 confirmed 19470
2404.805 (Subpart 2404.8) Regulation at 60 FR 46155 confirmed 19470
2404.805–1 Regulation at 60 FR 46155 confirmed 19470

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2405.301 (Subpart 2405.3) Regulation at 60 FR 46155 confirmed 19470
2406.304–70 Regulation at 60 FR 46155 confirmed 19470
2406.304–71 Regulation at 60 FR 46155 confirmed 19470
2406.501 Regulation at 60 FR 46155 confirmed 19470
2409.507 Redesignated from 2409.508 19470
2409.507–1 Redesignated from 2409.508–1 19470
2409.507–2 Redesignated from 2409.508–2 19470
2409.508 Redesignated as 2409.507 19470
2409.508–1 Redesignated as 2409.507–1 19470
2409.508–2 Redesignated as 2409.507–2 19470
2411 Redesignated from Part 2412; heading revised 19470
2411.104 (Subpart 2411.1) Redesignated as 2411.404 (Subpart 2411.4) 19470
2411.404 (Subpart 2411.4) Redesignated from 2411.104 (Subpart 2411.1) and revised 19470
2412 Authority citation revised 19470
Redesignated as Part 2411 19470
2413 Regulation at 60 FR 46155 confirmed 19470
2413.106–2 Regulation at 60 FR 46155 confirmed; revised 19470
2413.107 Regulation at 60 FR 46155 confirmed 19470
2413.402 Regulation at 60 FR 46155 confirmed 19470
2413.403 Regulation at 60 FR 46155 confirmed 19470
2413.404 Regulation at 60 FR 46155 confirmed 19470
2413.505–1 Regulation at 60 FR 46155 confirmed; revised 19470
2413.505–2 Regulation at 60 FR 46155 confirmed 19470
2413.601 (Subpart 2413.6) Regulation at 60 FR 46155 confirmed 19470
2414.406 Redesignated as 2414.407 19470
2414.406–3 Redesignated as 2414.407–3 19470

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2414.406–4 Regulation at 60 FR 46155 confirmed; redesignated as 2414.407–4 19470
2414.407 Redesignated from 2414.406 19470
2414.407–3 Redesignated from 2414.406–3 19470
2414.407–4 Redesignated from 2414.406–4 and revised 19470
2414.407–70 Redesignated as 2414.408–70 19471
2414.408 Added 19471
2414.408–70 Redesignated from 2414.407–70 19471
2415.407 Regulation at 60 FR 46155 confirmed 19470
Revised 19471
2415.408 Regulation at 60 FR 46156 confirmed 19470
2415.411 Regulation at 60 FR 46156 confirmed 19470
2415.411–70 Regulation at 60 FR 46156 confirmed 19470
2415.413–1 Revised 19471
2415.413–2 Added 19471
2415.604 Regulation at 60 FR 46156 confirmed 19470
2415.605 Regulation at 60 FR 46156 confirmed 19470
(c) and (e) redesignated as (d)(1) and (2) 19471
2415.608 Regulation at 60 FR 46156 confirmed 19470
(a) revised 19471
2415.609 Regulation at 60 FR 46156 confirmed 19470
2415.611 Regulation at 60 FR 46156 confirmed 19470
2415.612 Regulation at 60 FR 46156 confirmed 19470
2415.612–70 Regulation at 60 FR 46156 confirmed 19470
2415.613 Regulation at 60 FR 46156 confirmed 19470
2415.613–70 Regulation at 60 FR 46156 confirmed 19470
2415.613–72 Regulation at 60 FR 46156 confirmed 19470
2415.1004 Redesignated as 2415.1005 19471
2415.1005 Redesignated from 2415.1004 19471
2416.301—2416.301–3 (Subpart 2416.3) Regulation at 60 FR 46156 confirmed 19470

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2416.504 Redesignated as 2416.506 19471
2416.506 Redesignated from 2416.504; heading revised; (e) redesignated as 2416.506–70 19471
2416.506–70 Redesignated from 2416.504(e); heading added 19471
2417 Authority citation revised 19471
2417.204 (Subpart 2417.2) Added 19471
2419 Heading revised 19471
2419.201 (c), (d)(1) through (7) and (9) revised 19471
2419.708 (Subpart 2419.7) Heading revised 19472
2419.901 (Subpart 2419.9) Removed 19472
2420 Removed 19472
2426.101—2426.103 (Subpart 2426.1) Regulation at 60 FR 46156 confirmed 19470
2426.101 Regulation at 60 FR 46156 confirmed 19470
2426.102 Regulation at 60 FR 46156 confirmed 19470
2426.103 Regulation at 60 FR 46156 confirmed 19470
2426.202—2426.202–70 (Subpart 2426.2) Regulation at 60 FR 46156 confirmed 19470
2426.701 Regulation at 60 FR 46156 confirmed 19470
2426.702 Regulation at 60 FR 46157 confirmed 19470
2426.703 Regulation at 60 FR 46157 confirmed 19470
2428.204—2428.204–70 (Subpart 2428.2) Regulation at 60 0FR 46157 confirmed 19470
2429.101 Regulation at 60 FR 46157 confirmed 19470
2432.402 Regulation at 60 FR 46157 confirmed 19470
2432.906 Regulation at 60 FR 46157 confirmed 19470
2432.908 Regulation at 60 FR 46157 confirmed 19470
2434 Authority citation revised 19472
2434.001 Removed 19472
2436.602–2 Regulation at 60 FR 46157 confirmed 19470
2436.602–4 Regulation at 60 FR 46158 confirmed 19470

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2437.110 (f) revised 19472
2437.205 Regulation at 60 FR 46158 confirmed 19470
2442 Authority citation revised 19472
2442.1106 Revised 19472
2442.1107 Revised 19472
2452.211–70 Redesignated from 2452.211–70; introductory text revised 19472
2452.212–70 Redesignated as 2452.211–70 19472
2452.215–70 Regulation at 60 FR 46158 confirmed 19470
Revised 19472
2452.219–70 Regulation at 60 FR 46159 confirmed 19470
Amended; heading and introductory text revised 19473
2452.226–70 Regulation at 60 FR 46159 confirmed 19470
2452.232–70 Regulation at 60 FR 46159 confirmed 19470
2452.232–71 Regulation at 60 FR 46159 confirmed 19470
2452.237–75 Amended 19473
2452.237–77 Regulation at 60 FR 46159 confirmed 19470
2452.242–71 Introductory text revised 19473
2453.213–71 Regulation at 60 FR 46159 confirmed 19470
2453.213–72 Regulation at 60 FR 46159 confirmed 19470
2453.237–70 Regulation at 60 FR 46159 confirmed 19470

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2527 Authority citation revised 51022
2527.7001 Amended 51022
2532.401 Amended 51022

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1501.103 Redesignated as 1501.104 33572
1501.104 Redesignated as 1501.105; new 1501.104 redesignated from 1501.103 and revised 33572

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1501.104–1 Redesignated as 1501.105–1 33572
1501.104–2 Redesignated as 1501.105–2 33572
1501.104–3 Redesignated as 1501.105–3 33572
1501.105 Redesignated from 1501.104 33572
1501.105–1 Redesignated from 1501.104–1 33572
1501.105–2 Redesignated from 1501.104–2 and amended 33572
1501.105–3 Redesignated from 1501.104–3 33572
1501.602–3 (a) removed; (b) through (f) redesignated as (a) through (e) 33572
1505.203 Amended 33572
1509.507–1 (b) revised 33572
1513.403 Redesignated as 1515.404 33572
1513.404 Redesignated as 1515.403 33572
1513.505 Redesignated from 1513.505–2 33572
1513.505–2 Redesignated as 1513.505 33572
1514.000 Removed 33572
1514.205 Amended 37148
1514.205–5 Removed 33572
1515.403 Redesignated from 1513.403 33572
1515.413 (c) removed; (d) through (g) redesignated as (c) through (f) 33572
1515.600 Removed 33572
1515.603 Removed 33572
1515.604 (a) amended; (d) removed 37148
1515.608 (a)(1) and (2) revised 33572
1515.609 (a) revised; (b) removed; (c) redesignated as (b); new (b)(1) and new (2) revised 33572
1515.611 Removed 33573
1515.612 (a) amended; (a)(1)(vi) and (vii) removed; (a)(2) introductory text, (iii) and (c) revised; (a)(3) added 37148
1516.000 Removed 33573
1516.404–270 Removed 33573
1516.404–271 Removed 33573
1517.200 Removed 33573
1519.000 Removed 33573
1522.000 Removed 33573
1532.000 Removed 33573

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1533.000 Removed 33573
1535.007 Revised 38477
1542.000 Removed 33573
1542.700 Removed 33573
1542.705–70 Revised 33573
1545.000 Removed 33573
1546.000 Removed 33573
1552.209–70 Introductory text revised; (a), (b) and (c) removed 33573
1552.209–74 Amended 5348
1552.209–75 Introductory text amended 33573
1552.211–70 Introductory text amended 33573
1552.211–72 Introductory text amended 33573
1552.211–73 Introductory text amended 33573
1552.211–74 Introductory text amended 33573
1552.211–75 Introductory text amended 33573
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1552.211–78 Introductory text amended 33573
1552.211–79 Introductory text amended 33573
1552.217–73 Amended 37149
1552.217–74 Amended 37149
1552.235–72 Removed 38478
1552.235–74 Removed 38478
1552.235–77 Amended 38478
1552.235–78 Amended 38478

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1602.170–1 Revised; eff. 10–10–97 47573
1602.170–2 (a) revised; eff. 10–10–97 47573
1602.170–5 Redesignated as 1602.170–6; new 1602.170–5 added; eff. 10–10–97 47574
1602.170–6 Redesignated as 1602.170–7; new 1602.170–6 redesignated from 1602.170–5; eff. 10–10–97 47574
1602.170–7 Redesignated as 1602.170–8; new 1602.170–7 redesignated from 1602.170–6; eff. 10–10–97 47574

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1602.170–8 Redesignated as 1602.170–9; new 1602.170–8 redesignated from 1602.170–7; eff. 10–10–97 47574
1602.170–9 Redesignated as 1602.170–10; new 1602.170–9 redesignated from 1602.170–8 and revised; eff. 10–10–97 47574
1602.170–10 Redesignated as 1602.170–12; new 1602.170–10 redesignated from 1602.170–9; eff. 10–10–97 47574
1602.170–11 Redesignated as 1602.170–13; new 1602.170–11 added; eff. 10–10–97 47574
1602.170–12 Redesignated as 1602.170–14; new 1602.170–12 redesignated from 1602.170–10; eff. 10–10–97 47574
1602.170–13 Redesignated from 1602.170–11 and revised; eff. 10–10–97 47574
1602.170–14 Redesignated from 1602.170–12; eff. 10–10–97 47574
1603.701 Redesignated as 1603.7001; eff. 10–10–97 47574
1603.702 Redesignated as 1603.7002; eff. 10–10–97 47574
1603.703 Redesignated as 1603.7003; eff. 10–10–97 47574
1603.7001 Redesignated from 1603.701; eff. 10–10–97 47574
1603.7002 Redesignated from 1603.702; eff. 10–10–97 47574
1603.7003 Redesignated from 1603.703; eff. 10–10–97 47574
1604.705 Amended; eff. 10–10–97 47574
1615.802 Revised; eff. 10–10–97 47574
1615.804–70 Revised; eff. 10–10–97 47575
1615.804–71 Removed; eff. 10–10–97 47575
1615.804–72 Revised; eff. 10–10–97 47575
1615.805–70 (a) revised; eff. 10–10–97 47575
1616.102 Revised; eff. 10–10–97 47575
1616.270—1616.271 (Subpart 1616.2) Removed; eff. 10–10–97 47575
1616.7001—1616.7002 (Subpart 1616.70) Added; eff. 10–10–97 47575
1629 Added; eff. 10–10–97 47575

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1631.205–75 (b) revised; eff. 10–10–97 47575
1643 Added; eff. 10–10–97 47575
1644.170 Revised; eff. 10–10–97 47575
1644.270 Revised; eff. 10–10–97 47576
1645 Added; eff. 10–10–97 47576
1649.101–71 Added; eff. 10–10–97 47576
1649.101–72 Added; eff. 10–10–97 47576
1652.000 Revised; eff. 10–10–97 47576
1652.203–70 Amended; eff. 10–10–97 47576
1652.204–70 Revised; eff. 10–10–97 47576
1652.204–72 Amended; eff. 10–10–97 47576
1652.215–70 Revised; eff. 10–10–97 47576
1652.215–71 Amended; eff. 10–10–97 47577
1652.216–70 Revised; eff. 10–10–97 47577
1652.216–71 Introductory text revised; eff. 10–10–97 47577
1652.229–70 Added; eff. 10–10–97 47577
1652.232–70 Amended; eff. 10–10–97 47578
1652.232–71 Amended; eff. 10–10–97 47578
1652.243–70 Added; eff. 10–10–97 47578
1652.244–70 Amended; eff. 10–10–97 47578
1652.245–70 Added; eff. 10–10–97 47578
1652.249–71 Added; eff. 10–10–97 47579
1652.249–72 Added; eff. 10–10–97 47579
1652.370 Amended; eff. 10–10–97 47580
Table corrected 50435
1653 Table amended; eff. 10–10–97 47583

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1803.101–1 Amended 14016
1803.101–2 Amended 14016
1803.104 Revised 36704
1803.104–3 Revised 36704
1803.104–5 (d)(1)(A) amended 14016
Revised 36704
1803.104–10 Revised 36704

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1804.470–3 Redesignated as 1803.470–4; new 1803.470–3 added 36705
1804.470–4 Redesignated from 1803.470–3 36705
1805.303–71 Heading, (a) introductory text and (3) revised 4466
1805.402 Revised 14016
1807.105 (b)(1) added 36705
1807.7000 (Subpart 1807.70) Added 36705
1809.106–3 (a) designation removed 36705
1812.301 (f)(i)(J) added 14017
1813 Revised 36705
1815 Regulation at 61 FR 52325 confirmed 3464
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1815.508–70 Amended 36706
1815.605–71 Added 14017
1815.611 (d)(iii) amended 36706
1815.612 Added 14017
1815.612–70 (g) removed; (h) through (k) redesignated as (g) through (i) 14017
1815.804–1 (b)(2)(iii) removed 36706
1815.805–5 (a)(1)(E) added 36706
1815.807 (b)(ii) revised 4467
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