

3570.102

48 CFR Ch. 35 (10-1-00 Edition)

(c) When choosing between goods from sources within Panama that are otherwise equal, preference shall be given to those goods having a larger percentage of components of Panamanian origin.

(d) When conducting an acquisition of supplies or services for which the estimated cost is not expected to exceed the small purchase limitation in FAR part 13, participation may be limited to sources in Panama unless the contracting officer determines that there is no reasonable expectation of obtaining quotations from two or more such sources that:

(1) Will be responsive to the required delivery time, and

(2) Will be comparable in quality and price to supplies or services from sources outside Panama.

(e)(1) In order to conduct an acquisition of supplies or services above the small purchase limitation and limit participation in the acquisition to

sources in Panama, the contracting officer shall:

(i) Prepare and submit a class or an individual determination and findings to the Procurement Executive, and

(ii) Obtain that official's written approval of such determination and findings.

(2) The determination and findings must clearly document that:

(i) An acquisition limited to such sources would result in obtaining supplies or services at the time they are required that would be comparable in quality and price to those obtainable from sources outside Panama, or

(ii) An acquisition from sources outside Panama would be impracticable because of the nature of the acquisition (e.g., a requirements type contract where deliveries must be made within a very short time span by trucks or pipeline from stockpiles or storage facilities located in Panama).

CHAPTER 44—FEDERAL EMERGENCY MANAGEMENT AGENCY

(Parts 4400 to 4499)

SUBCHAPTER A—GENERAL

| <i>Part</i> | | <i>Page</i> |
|-------------|---|-------------|
| 4401 | Federal Emergency Management Agency (FEMA) Acquisition Regulation System | 175 |
| 4402 | Definition of words and terms | 178 |
| 4403 | Improper business practices and personal conflicts of interest | 178 |

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

| | | |
|------|---|-----|
| 4405 | Publicizing contract actions | 180 |
| 4406 | Competition requirements | 180 |
| 4408 | Required sources of supplies and services | 180 |
| 4409 | Contractor qualifications | 181 |
| 4412 | Contract delivery or performance | 181 |

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

| | | |
|------|-----------------------------------|-----|
| 4414 | Sealed bidding | 183 |
| 4415 | Contracting by negotiation | 183 |
| 4416 | Types of contracts | 185 |
| 4417 | Special contracting methods | 187 |

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

| | | |
|------|---|-----|
| 4419 | Small business and small disadvantaged business concerns | 188 |
| 4424 | Protection of privacy and freedom of information | 188 |
| 4426 | Other socioeconomic programs | 188 |

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

| | | |
|------|--------------------------|-----|
| 4429 | Taxes | 189 |
| 4432 | Contract financing | 189 |

48 CFR Ch. 44 (10-1-00 Edition)

| | | |
|--|---|-----|
| 4433 | Protests, disputes and appeals | 189 |
| SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING | | |
| 4435 | Research and development contracting | 190 |
| 4436 | Construction and architect-engineer contracts | 190 |
| 4450 | Extraordinary contractual actions | 190 |
| SUBCHAPTER H—CLAUSES AND FORMS | | |
| 4452 | Solicitation provisions and contract clauses | 192 |

SUBCHAPTER A—GENERAL

PART 4401—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ACQUISITION REGULATION SYSTEM

Sec.

4401.000 Scope of part.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

4401.103 Applicability.

4401.104 Issuance.

4401.104-1 Publication and code arrangement.

4401.104-3 Copies.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

4401.303 Codification and public participation.

Subpart 4401.4—Deviations From the FAR

4401.403 Individual deviations.

4401.404 Class deviations.

4401.405 Deviations pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600-70 Scope of subpart.

4401.601 General.

4401.603 Selection, appointment, and termination of appointment.

4401.603-2 Selection.

4401.603-3 Appointment.

Subpart 4401.7—Determinations and Findings

4401.707-70 Signature authority.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

4401.7001 Procurement contracts.

4401.7001-1 Situations for use.

4401.7001-2 Examples.

4401.7002 Assistance.

4401.7002-1 Grants.

4401.7002-2 Cooperative agreements.

4401.7002-3 Examples of unsubstantial involvement.

4401.7002-4 Examples of substantial involvement.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31316, Aug. 1, 1985, unless otherwise noted.

4401.000 Scope of part.

This part sets forth policies and procedures concerning the Federal Emergency Management Agency Acquisition Regulation (FEMAAR) System.

Subpart 4401.1—Purpose, Authority, Issuance

4401.101 Purpose.

FEMAAR is a supplement to the Federal Acquisition Regulation (FAR) and is established for the codification and publication of uniform policies and procedures for acquisitions by FEMA.

4401.103 Applicability.

This regulation applies to all acquisitions within FEMA, but not to placement or administration of cooperative agreements or grants.

4401.104 Issuance.

4401.104-1 Publication and code arrangement.

(a) The FEMAAR is published in (1) the daily issue of the FEDERAL REGISTER and (2) cumulated form in the Code of Federal Regulations (CFR).

(b) The FEMAAR is issued as chapter 44 of title 48, CFR.

4401.104-3 Copies.

Copies of the FEMAAR in FEDERAL REGISTER and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Agency offices may request copies of the FEMAAR from the Policy and Evaluation Division, Office of Acquisition Management.

Subpart 4401.3—Agency Acquisition Regulations

4401.301 Policy.

Policies, procedures, and guidance of an internal nature may be issued

4401.303

through internal FEMA issuances such as manuals, standard operating procedures, directives or instructions.

4401.303 Codification and public participation.

If subject matter in FAR requires no implementation, the FEMAAR will not contain a corresponding part, subpart, section, or subsection number. FAR subject matter governs.

Subpart 4401.4—Deviations From the FAR

4401.403 Individual deviations.

The Director, Office of Acquisition Management, must authorize individual deviations in advance. Requests for authorization must:

- (a) Cite the specific parts of the FAR or FEMAAR from which it is desired to deviate;
- (b) Describe the deviation fully;
- (c) Indicate the circumstances which require the deviation;
- (d) Give reasons supporting the action requested; and
- (e) Give reasons why the action is in the best interest of the Government.

4401.404 Class deviations.

The Director, Office of Acquisition Management, must authorize class deviations in advance.

4401.405 Deviations pertaining to treaties and executive agreements.

The Director, Office of Acquisition Management, is the central control point for all deviations including those pertaining to treaties and executive agreements.

Subpart 4401.6—Contracting Authority and Responsibilities

4401.600–70 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.

4401.601 General.

The Director, Office of Acquisition Management, is designated the head of

48 CFR Ch. 44 (10–1–00 Edition)

contracting activities and FEMA's procurement executive. The Director, Office of Acquisition Management, shall establish policy throughout the agency; monitor the overall effectiveness and efficiency of the agency's contracting offices; establish controls to assure compliance with laws, regulations, and procedures; and delegate contracting officer authority. The Director, Office of Acquisition Management, shall exercise the authority delegated under 44 CFR 2.67 FEMA Organization, Functions and Delegations.

4401.603 Selection, appointment, and termination of appointment.

4401.603–2 Selection.

In the areas of experience, training, and education, the following shall be required unless contracting authority is limited to a simplified purchase procedures. Waiver of any of these criteria shall be in writing:

(a) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have a minimum of two years experience performing contracting, procurement, or purchasing functions in a Government or commercial contracting office. Additionally, where a contracting officer will work in a specialized field, experience in the field shall be a criterion for the appointment.

(b) An individual contracting officer or an individual appointed to a position having contracting officer authority shall have the equivalent of a bachelor's degree from an accredited college or institution with major studies in business administration, law, accounting, or related fields. The appointing official may waive this requirement when a candidate is otherwise qualified by virtue of extensive contract-related experience and training, business acumen, judgment, character, reputation, and ethics.

(c) An individual contracting officer or an individual appointed to a position having contracting authority shall have successfully completed training courses in both Government basic procurement and Government contract administration, each of not less than 80 class hours. Incumbents not meeting

the special training requirements shall be given 24 months to meet the minimum qualification standards.

4401.603-3 Appointment.

Except for disaster-related activities and unusual circumstances as determined by the head of the contracting activity, it is policy to delegate contracting officer authority to individuals rather than to positions. The head of the contracting activity is the appointing authority. Except where the delegation of authority specifically includes the authority for further redelegation, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include a clear statement of such authority and its responsibilities and limitations.

Subpart 4401.7—Determinations and Findings

4401.707-70 Signature authority.

The head of the contracting activity shall sign all class Determination and Findings (D & F's) not otherwise reserved to the agency head.

Subpart 4401.70—Procurement Contracts Versus Assistance Instruments

4401.7000 Scope of subpart.

This subpart describes the situations appropriate for the use of procurement contracts, grants, or cooperative agreements and provides examples of each.

4401.7001 Procurement contracts.

4401.7000-1 Situations for use.

Procurement contracts are to be used whenever the principal purpose of the instrument is acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government.

4401.7001-2 Examples.

Procurement contracts normally will be used when the principal purpose of the relationship is:

(a) Evaluation (including research if an evaluation character) of the performance of Government program,

projects, or grantee activity initiated by FEMA.

(b) Projects funded by administrative funds.

(c) Technical assistance rendered on behalf of the Government to any third party including those receiving grants or cooperative agreements.

(d) Surveys, studies, and research which provide specific information desired by the Government for its direct activities or for dissemination to the public.

(e) Consulting or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(f) Planning for Government use.

(g) Conferences conducted in behalf of the Government.

(h) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(i) Design or development of items for Government use or pursuant to agency definition or specifications.

(j) Generation of management information or other data for Government use.

4401.7002 Assistance.

Assistance may take the form of either grants or cooperative agreements and include:

(a) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.

(b) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.

4401.7002-1 Grants.

Grants are to be used whenever the principal purpose of the relationship is to transfer money, property, services, or anything else of value to a recipient to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is not anticipated.

4401.7002-2

4401.7002-2 Cooperative agreements.

Cooperative agreements are to be used whenever the principal purpose of the relationship is the transfer of money, property, service, or anything else of value to recipients to accomplish a public purpose. The support or stimulation to be accomplished by this transfer must be authorized by Federal statute and substantial involvement is anticipated.

4401.7002-3 Examples of unsubstantial involvement.

Involvement is not substantial and a grant is the proper instrument when the following types of involvement are planned:

- (a) Approval of recipient plans prior to award.
- (b) Normal Federal stewardship such as site visits, performance reporting, financial reporting, and audits to ensure that objectives, terms, and conditions of the grants are met.
- (c) Unanticipated involvement to correct deficiencies in project or financial performance from the terms of the grants.
- (d) General statutory requirements understood in advance of the award such as civil rights, environmental protection, and provision for the handicapped.
- (e) Review of performance after completion.
- (f) General administrative requirements, such as those included in OMB Circulars A-21, A-95, A-110, and A-102.

4401.7002-4 Examples of substantial involvement.

Involvement is substantial and a cooperative agreement is the proper instrument when the following types of involvement are planned:

- (a) Agency review and approval of one stage before work can begin on a subsequent stage during the period covered by the cooperative agreement.
- (b) Agency and recipient collaboration or joint participation in the performance of the assisted activities.
- (c) Highly prescriptive agency requirements prior to award limiting recipient discretion with respect to scope of services offered, organizational structure, staffing, mode of operation and other management processes, cou-

48 CFR Ch. 44 (10-1-00 Edition)

pled with close agency monitoring or operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with these requirements.

(d) General administrative requirements beyond those included in OMB Circulars A-102 and A-110.

PART 4402—DEFINITION OF WORDS AND TERMS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4402.1—Definitions

4402.100 Definitions.

Agency means the Federal Emergency Management Agency (FEMA).

Director means the Director of the Federal Emergency Management Agency.

Interagency agreement means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services, or property are provided to, or obtained from, one or more agencies, bureaus, or departments of the Federal Government. Funds are transferred between the parties as consideration for the supplies, services, or property.

Memorandum of Understanding means an agreement between two or more agencies, bureaus, or departments of the Federal Government or other entity. Funds are not transferred between the parties.

Program office means any office which generates requests for procurement actions.

Project officer means the program office representative cognizant over the technical aspects of a given procurement action.

[50 FR 31318, Aug. 1, 1985]

PART 4403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 4403.1—Safeguards

Sec.

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.

Federal Emergency Management Agency

4403.602

- 4403.101-3 Agency regulations.
- 4403.103 Independent pricing.
- 4403.103-2 Evaluating the certification.

Subpart 4403.2—Contractor Gratuities to Government Personnel

- 4403.203 Reporting suspected violations of the Gratuities clause.
- 4403.204 Treatment of violations.

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

- 4403.602 Exceptions.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4403.1—Safeguards

4403.101-2 Solicitation and acceptance of gratuities by Government personnel.

Exceptions to the prohibition against soliciting or accepting gratuities are explained in 44 CFR part 3, subpart B.

4403.101-3 Agency regulations.

FEMA "Standards and Conduct" are published in 44 CFR part 3. They include requirements for financial disclosure.

4403.103 Independent pricing.

4403.103-2 Evaluating the certification.

The Director, Office of Acquisition Management, is authorized to make

the determination described in FAR 3.103-2(b)(2).

Subpart 4403.2—Contractor Gratuities to Government Personnel

4403.203 Reporting suspected violations of the Gratuities clause.

Suspected violations shall be reported in the FEMA Office of the Inspector General. A report shall include all facts and circumstances relevant to the case.

4403.204 Treatment of violations.

Following review and any necessary investigation, the Inspector General shall make recommendations to the Director or a designee. If action is to be taken against a contractor, the contractor shall be given the opportunity for a hearing in accordance with FAR 3.204(b).

Subpart 4403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

4403.602 Exceptions.

The Director, Office of Acquisition Management, may authorize an exception to the policy in FAR 3.601, based on facts and circumstances provided by the program office.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 4405—PUBLICIZING CONTRACT ACTIONS

Sec.
4405.001 Policy.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

AUTHORITY: 40 U.S.C. 486(c); Reorganizational Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

4405.001 Policy.

The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be used for this purpose. The search should include a review of data or brochures furnished by sources seeking to do business with the agency. It also should include program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider seeking other sources by publication of proposed procurements.

Subpart 4405.2—Synopsis of Proposed Contracts

4405.206 Synopsis of subcontract opportunities.

Unless it is not in the Government's interest, the contracting officer shall make the solicitation source list available to firms requesting it for subcon-

tracting opportunities on contracts exceeding the small purchase threshold.

Subpart 4405.5—Paid Advertisements

4405.502 Authority.

In accordance with 44 CFR 2.72(a) authority to approve publication of paid advertisement in newspapers has been delegated to the Director, Office of Administrative Support.

PART 4406—COMPETITION REQUIREMENTS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4406.5—Competition Advocate

4406.501 Requirement.

The Chief, Policy and Planning Division, Office of Acquisition Management is designated FEMA's Competition Advocate.

[50 FR 31319, Aug. 1, 1985]

PART 4408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4408.8—Acquisition of Printing and Related Supplies

4408.802 Policy.

Contracting officers shall obtain approval from the Director, Office of Administrative Support, FEMA's central printing authority before contracting for printing.

[50 FR 31319, Aug. 1, 1985]

PART 4409—CONTRACTOR QUALIFICATIONS

Subpart 4409.4—Debarment, Suspension, and Ineligibility

Sec.

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

4409.406 Debarment.

4409.406-1 General.

4409.406-3 Procedures.

4409.407 Suspension.

4409.407-1 General.

4409.407-3 Procedures.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31319, Aug. 1, 1985, unless otherwise noted.

Subpart 4409.4—Debarment, Suspension, and Ineligibility

4409.404 Consolidated list of debarred, suspended, and ineligible contractors.

The Director, Office of Acquisition Management, will notify GSA, maintain records, establish procedures, and direct inquiries as required by FAR 9.404(c).

4409.406 Debarment.

4409.406-1 General.

The Chief of Staff shall be the debarring official.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.406-3 Procedures.

(a) Determination to debar or take other action concerning a firm or individual for a cause listed in FAR 9.406-2 shall be made by the Chief of Staff. Whenever cause for debarment becomes known to any contracting officer, the matter shall be submitted, with recommendations of the Director, Office of Acquisition Management, via the Office of General Counsel, to the Chief of Staff for appropriate action. The documented file of the case will be included in the submission.

(b) If the Chief of Staff concurs in the proposed debarment, a notice of proposal to debar shall be issued by the Chief of Staff or designee.

(c) The Chief of Staff or designee shall conduct any hearings requested in connection with debarment proceedings. The firm or individual shall have the opportunity to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, or if the firm or individual does not respond within 30 days from receipt of the written notice, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

(d) Appeals may be taken within 30 days after receipt by the firm or individual of a decision to debar. Appeals shall be filed with the Director, FEMA, who shall make a decision based on the record. The Director's decision shall be final.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.407 Suspension.

4409.407-1 General.

The Chief of Staff shall be the suspending official.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4409.407-3 Procedures.

(a) Any contracting officer may recommend suspension of bidders. These recommendations shall be accompanied by the documented file in the case and be submitted through the Director, Office of Acquisition Management, via the Office of General Counsel, to the Chief of Staff. The Chief of Staff shall issue the notice of suspension.

(b) The Director, Office of Acquisition Management, shall develop and maintain suspension procedures.

[50 FR 31319, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

PART 4412—CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4412.303

48 CFR Ch. 44 (10-1-00 Edition)

**Subpart 4412.3—Priorities,
Allocations, and Allotments**

Commerce through the head of the contracting activity.

4412.303 Procedures.

[50 FR 31320, Aug. 1, 1985]

Rejected rated orders or ACM orders shall be sent to the Department of

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 4414—SEALED BIDDING

Subpart 4414.4—Opening of Bids and Award of Contract

- 4414.401 Receipt and safeguarding of bids.
- 4414.402 Opening of bids.
- 4414.406 Mistakes in bids.
- 4414.406-3 Other mistakes disclosed before award.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31320, Aug. 1, 1985, unless otherwise noted.

Subpart 4414.4—Opening of Bids and Award of Contract

4414.401 Receipt and safeguarding of bids.

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received, and the date. The individual receiving the bids shall then initial under the marking.

(b) A copy of the envelope or other covering bearing the documentation of a bid that was opened by mistake shall be retained in the file.

4414.402 Opening of bids.

The contracting officer, or duly authorized representative, shall be designated as the bid opening officer.

4414.406 Mistakes in bids.

4414.406-3 Other mistakes disclosed before award.

The Director, Office of Acquisition Management, is delegated the authority to make the determinations concerning mistakes in bid other than obvious clerical errors discovered prior to award. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

PART 4415—CONTRACTING BY NEGOTIATION

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

Sec.

- 4415.413 Disclosure and use of information before award.
- 4415.413-2 Alternate II.
- 4415.413-70 Policy.
- 4415.413-71 Release of information during the solicitation phase.
- 4415.413-72 Disposition of unsuccessful proposals.

Subpart 4415.5—Unsolicited Proposals

- 4415.500 Scope of subpart.
- 4415.505-1 Content of unsolicited proposals.
- 4415.505-2 Unsolicited renewal proposals.
- 4415.506 Agency procedures.
- 4415.506-1 Receipt and initial review.

Subpart 4415.6—Source Selection

- 4415.612 Formal source selection.
- 4415.612-70 Scope.
- 4415.612-71 Key participants.

Subpart 4415.8—Price Negotiation

- 4415.803 General.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

- 4415.1003 Debriefing of unsuccessful offerors.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31320, Aug. 1, 1985, unless otherwise noted.

Subpart 4415.4—Solicitation and Receipt of Proposals and Quotations

4415.413 Disclosure and use of information before award.

4415.413-2 Alternate II.

These alternate FAR procedures may be used if approved in writing by the head of the contracting activity.

4415.413-70

4415.413-70 Policy.

It is FEMA policy to use information contained in proposals only for evaluation purposes unless information (a) is generally available to the public, (b) is already the property of the Government, (c) is already available to the Government with unrestricted use rights, or (d) is or has been made available to the Government without restriction.

4415.413-71 Release of information during the solicitation phase.

No information shall be released during the solicitation phase, except as follows: Each solicitation for a negotiated acquisition shall name an individual in the contracting office to respond to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions whether of a procedural or substantive nature shall be directed to that individual. No one else shall exchange comments with offerors or potential offerors. Questions requiring clarification of substantive portions of the solicitation shall be answered by amendment of the solicitation. A copy of the amendment shall be sent to each recipient of the solicitation.

4415.413-72 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed as soon as practicable after contract award. The one remaining copy of each shall be retained in the official contract file.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use is given to the Government regardless of its success in the competition.

Subpart 4415.5—Unsolicited Proposals

4415.500 Scope of subpart.

This subpart sets forth procedures for controlling the receipt, evaluation, and

48 CFR Ch. 44 (10-1-00 Edition)

timely disposition of unsolicited proposals.

4415.505-1 Content of unsolicited proposals.

FEMA's Appropriation Act (Public Law 100-404, Section 407) requires the contractor to cost share if a research contract results from an unsolicited proposal. This requirement may be waived only when it would not be equitable for the Government to require cost sharing. To waive, (a) the offeror must certify in writing to the contracting officer that it has no commercial, production, educational, or service activities on which to use the results of the research and that it has no means of recovering any cost on such projects; and (b) the contracting officer must make a written determination that there is no measurable gain to the performing organization and no mutuality of interest. This determination shall be placed in the contract file. (See 4416.303.)

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4415.505-2 Unsolicited renewal proposals.

Renewal proposals, i.e., those for the extension or augmentation of current contracts, are subject to the same FAR and FEMA regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

[55 FR 28207, July 10, 1990]

4415.506 Agency procedures.

(a) The Office of Acquisition Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals. Unsolicited proposals and requests for additional information regarding their preparation shall be submitted to: Federal Emergency Management Agency, Office of Acquisition Management, Policy & Evaluation Division, 500 C Street SW, room 726, Washington, DC 20472.

(b) Unsolicited proposals submitted to FEMA program, regional or field offices, or misdirected proposals, shall be immediately forwarded by recipients to the Headquarters Office of Acquisition Management.

(c) Unsolicited proposals shall be submitted in an original and five copies at least six months in advance of the date the offeror desires to begin work so that there will be enough time to evaluate the proposal and negotiate a contract.

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

4415.506-1 Receipt and initial review.

(a) The Office of Acquisition Management shall acknowledge an unsolicited proposal. Simultaneously, copies of the proposal shall be sent to the appropriate program offices for evaluation.

(b) *Information Requirements.* The Office of Acquisition Management shall keep records of unsolicited proposals received and shall provide prompt status information to requestors. The records shall include, as a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year, the identity of the proposers and the office to which each was referred. These numbers shall be broken out by source (large business, small business, university, or nonprofit institutions).

[50 FR 31320, Aug. 1, 1985, as amended at 55 FR 28207, July 10, 1990]

Subpart 4415.6—Source Selection

SOURCE: 55 FR 28207, July 10, 1990, unless otherwise noted.

4415.612 Formal source selection.

4415.612-70 Scope.

(a) Formal source selection procedures shall apply to competitively negotiated acquisition when the estimated cost exceeds \$25,000.

(b) Formal source selection procedures do not apply to the acquisition of Architect-Engineer Services, acquisition from other Government agencies (including State and local), or any other acquisition which is specifically exempted by the Director.

4415.612-71 Key participants.

(a) A proposal evaluation team shall be formed to conduct the technical evaluation of proposals. For acquisitions estimated to cost \$10 million or

less, the team shall be called the Technical Evaluation Panel (TEP) and shall consist of at least three (3) voting members. For acquisitions in excess of \$10 million, or those whose estimated cost does not exceed \$10 million, but the selected source is likely to receive funding for future phase(s) of the same project, and the aggregate amount of such funding (including the current acquisition) is estimated to exceed \$10 million, the team shall be called the Source Evaluation Board (SEB) and shall consist of at least five (5) voting members.

(b) The Source Selection Official or the Contracting Officer, depending upon the dollar amount of the proposed award and any anticipated additions to it, shall select a source for contract award. For acquisitions estimated to exceed \$10 million, the program head, i.e., Associate Director/Administrator, of the acquiring office shall be the Source Selection Official. For acquisitions estimated to cost \$10 million or less, the Contracting Officer shall be the Source Selection Official.

Subpart 4415.8—Price Negotiation

4415.803 General.

When all efforts to get a contractor to agree to a reasonable price or fee have failed, the contracting officer shall refer the matter to the head of the contracting activity.

Subpart 4415.10—Preaward, Award and Postaward Notifications, Protests, and Mistakes

4415.1003 Debriefing of unsuccessful offerors.

Any unsuccessful offeror may write for a debriefing within two months after contract award. The contracting officer shall provide the debriefing.

PART 4416—TYPES OF CONTRACTS

Subpart 4416.3—Cost-Reimbursement Contracts

Sec.

4416.303 Cost-sharing contracts.

**Subpart 4416.6—Time-and-Materials,
Labor-Hour, and Letter Contracts**

4416.603 Letter contracts.
4416.603-3 Limitations.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31321, Aug. 1, 1985, unless otherwise noted.

**Subpart 4416.3—Cost-
Reimbursement Contracts**

4416.303 Cost-sharing contracts.

(a) This subsection sets forth basic guidelines governing cost-sharing contract.

(b)(1) Cost sharing with non-Federal organizations shall be encouraged in contracts for basic or applied research in which both parties have considerable interest.

(2) Contracting officers shall assure themselves of the following in determining contract type:

(i) The research effort has more than minor relevance to the non-Federal activities of the performing organization and is not primarily a service to the Government.

(ii) The performing organization has adequate non-Federal sources of funds from which to make a cash contribution.

(iii) The performing organization is engaged primarily in production or other service activities, as opposed to research and development, and is in a favorable position to make a cost contribution.

(iv) The principal purpose of the contract is research.

(v) Payment of the full cost of the project is not necessarily in order to obtain the services of the particular organization.

(3) FEMA's Appropriation Act requires cost sharing by the contractor under research contracts resulting from unsolicited proposals. See 4415.505-1.

(c) Guidelines for determining the amount of cost sharing.

(1) For educational institutions and other not-for-profit or non-profit organizations, cost sharing may vary from 1 to 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to

provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic-year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from 1 percent or less to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. Recognize, however, that organizations predominately engaged in research and development with little other activity may not be able to derive a monetary benefit from the research under Federal agreements.

(3) A fee will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing normal fees on the research. However, if the research is expected to be of major value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated shall contain the clause in 4452.216-70.

[50 FR 31321, Aug. 1, 1985, as amended at 55 FR 28208, July 10, 1990]

**Subpart 4416.6—Time-and-Mate-
rials, Labor-Hour, and Letter
Contracts**

4416.603 Letter contracts.

4416.603-3 Limitations.

A letter contract may be used only if the head of the contracting activity executes a determination and finding that no other contract type is suitable.

Federal Emergency Management Agency

4417.7001

**PART 4417—SPECIAL
CONTRACTING METHODS**

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4417.70—General

4417.7001 Preference for local contractors.

(a) This subsection establishes policies relating to local contractor preference to receive contract awards resulting from competitive solicitations under a Presidentially declared major disaster or emergency operation.

(b) The geographic areas to which local contractor preference shall apply are those affected by the Presidentially declared disaster and designated in the FEDERAL REGISTER by the Associate Director, State and Local Programs and Support, or his designee. Geographical areas shall be identified by county or other political subdivision.

(c) Pursuant to the provisions of Pub. L. 93-288, the provisions set forth in

4452.217-70 shall be included in each competitive solicitation for disaster relief response.

(d) If the contracting officer determines it to be in the best interest of the Government, the provision set forth in 4452.217-70 need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the contracting activity.

(e) If the contracting officer makes the determination of paragraph (d) of this section, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus area if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Dividing large requirements into several smaller requirements.

[50 FR 31322, Aug. 1, 1985]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4419.2—Policies

4419.201 General policy.

(a) The Director, Office of Personnel and Equal Opportunity, is also the Director, Office of Small and Disadvantaged Business Utilization.

(b) The Chief, Policy and Evaluation Division, Office of Acquisition Management, is the small business technical advisor.

(c) Each contracting officer is a small and disadvantaged business utilization specialist.

[50 FR 31322, Aug. 1, 1985, as amended at 55 FR 28208, July 10, 1990]

PART 4424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4424.2—Freedom of Information Act

4424.202 Policy.

FEMA's Freedom of Information Act policy is codified at 44 CFR part 5.

[50 FR 31322, Aug. 1, 1985]

PART 4426—OTHER SOCIOECONOMIC PROGRAMS

Sec.

4426.101 General policy.

4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4426.101 General policy.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits Federal agencies from discriminating against qualified persons on the grounds of disability. The law not only applies to internal employment practices but extends to agency interaction with members of the public who participate in FEMA programs. (FEMA's implementation of section 504 of this Act is codified at 44 CFR part 16.)

[55 FR 28208, July 10, 1990]

4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

It is FEMA's policy to extend the provisions of the Rehabilitation Act of 1973, as amended, to vendors who interact with the public while under contract to FEMA. Therefore, FEMA Clause 4452.226-01, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, shall be included in FEMA contracts over \$25,000 when in the performance of such contract the contractor will plan meetings, seminars and conferences which may be attended by persons with disabilities.

[55 FR 28208, July 10, 1990]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 4429—TAXES

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4429.1—General

4429.101 Resolving tax problems.

(a) The Office of General Counsel is responsible, with FEMA, for handling all tax problems. It also is responsible for asking the Department of Justice for representation of intervention in proceedings concerning taxes.

(b) The contracting officer shall request, in writing, the assistance of the Office of General Counsel in resolving a tax problem. The request shall detail the problem and include supporting information. The Office of General Counsel shall inform the contracting officer of the disposition of the tax problem and the contracting officer will tell the contractor.

[50 FR 31322, Aug. 1, 1985]

PART 4432—CONTRACT FINANCING

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4432.4—Advance Payments

4432.402 General.

The head of the contracting activity has responsibility and authority to make findings and determinations and to approve or disapprove contract terms.

[50 FR 31322, Aug. 1, 1985]

PART 4433—PROTESTS, DISPUTES AND APPEALS

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4433.103—Protests to the Agency

4433.103 Protests to the agency.

(a) Protests should be filed on a timely basis to the Contracting Officer specified in the solicitation or contract. Protests are considered timely if, when based on alleged improprieties in a solicitation which are apparent prior to the bid/proposal closing time, they are filed not later than the closing date, and in other cases they are filed within 10 working days after the basis of the protest is known or should have been known whichever is earlier.

(b) If a protest is received prior to award, the Contracting Officer shall notify all offerors within one full working day after consultation with the Office of General Counsel (OGC). An award will not be made unless a written determination is approved by the Head of the Contracting Activity in accordance with the criteria set forth in FAR 33.103.

(c) If a protest is received after award, the Contracting Officer shall give careful consideration to suspending contract performance if it appears likely that the award may be invalidated and the Government's interest will not be harmed by a delay in the receipt of goods or services. The Contracting Officer's determination to suspend performance should be made in writing and approved by the Head of the Contracting Activity after consultation with OGC. If the decision is to proceed with contract award or continue with contract performance, the Contracting Officer shall include the written findings in the file and shall give written notice of the decision to the protestor and other interested parties.

(d) The Contracting Officer/Contract Specialist shall prepare the final decision for approval by the Head of the Contracting Activity. The protestor shall be notified of the final decision regarding its protest within 30 working days after receipt of the protest.

[55 FR 28208, July 10, 1990]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 4435—RESEARCH AND DEVELOPMENT CONTRACTING

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4435.003 Policy.

Cost-sharing policy for research and development contracts is stated in 4415.502-70.

[50 FR 31322, Aug. 1, 1985]

PART 4436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 4436.6—Architect-Engineer Services

Sec.

4436.602-2 Evaluation boards.

4436.602-4 Selection authority.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4436.6—Architect-Engineer Services

4436.602-2 Evaluation boards.

(a) Each architect-engineer evaluation board, permanent or ad hoc, shall have at least five voting members and one alternate. These will be Federal employees. A majority of the voting members will be from the program of office.

(b) During the selection process, a board member or advisor may have, or appear to have, a conflict of interest regarding a firm in the competition. Immediately upon becoming aware of a potential conflict or an appearance of a conflict, the member or advisor shall notify the board chairperson who shall, in turn, inform the Office of General Counsel. The Office of General Counsel shall make a final determination on the conflict issue.

(c) The evaluation board is to be insulated from outside pressures. Information concerning board deliberations shall be divulged only to persons having a need-to-know.

[50 FR 31322, Aug. 1, 1985]

4436.602-4 Selection authority.

(a) Heads of program offices which may require architect-engineer services are designated as selection authorities for acquisition of architect-engineer services.

(b) A determination shall be sent to the contracting officer listing the selected firms in order of preference.

[50 FR 31322, Aug. 1, 1985]

PART 4450—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

Sec.

4440.201 Delegation of authority.

4450.202 Contract adjustment boards.

AUTHORITY: 50 U.S.C. 1431-1435; E.O. 10789; E.O. 12148.

Subpart 4450.2—Delegation of and Limitations on Exercise of Authority

4450.201 Delegation of authority.

All authority granted by 48 CFR 50.101 may be exercised by the Director of the Federal Emergency Management Agency. Such authority to approve, authorize, and direct appropriate action under this Part and to make all appropriate determinations and findings which do not obligate the United States in excess of \$50,000 are delegated to the Director, Office of Acquisition Management. Such authority to approve, and direct appropriate action under this Part and to make all appropriate determinations and findings which may obligate the United States in excess of \$50,000 are delegated to the FEMA Contract Adjustment Board. The limitations contained in 48 CFR 50.201 and 50.202 apply.

[50 FR 31322, Aug. 1, 1985]

4450.202 Contract adjustment boards.

As cases arise under the Act, the Director of FEMA may appoint, as needed, a FEMA Contract Adjustment Board consisting of one senior staff

Federal Emergency Management Agency

4450.202

member, not otherwise involved with the action under consideration, from each of the following offices:

- (a) Acquisition Management, who shall act as Chairperson
- (b) General Counsel
- (c) Comptroller.

[50 FR 31322, Aug. 1, 1985]

SUBCHAPTER H—CLAUSES AND FORMS

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

(End of clause)

[55 FR 28208, July 10, 1990]

Subpart 4452.2—Texts of Provisions and Clauses

Sec.

4452.216-70 Consideration and payment (Cost-Sharing).

4452.217-70 Preference for local contractors in Presidentially declared major disasters or emergencies.

4452.226-1 Accessibility of meetings, conferences and seminars to persons with disabilities.

4452.227-70 Reproduction of reports.

4452.227-71 Coordination of Federal reporting requirements.

4452.227-72 Publication.

AUTHORITY: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

SOURCE: 50 FR 31323, Aug. 1, 1985, unless otherwise noted.

Subpart 4452.2—Texts of Provisions and Clauses

4452.216-70 Consideration and payment (Cost-Sharing).

As prescribed in 4416.303, include the following clause in research and development contracts with non-Federal organizations:

CONSIDERATION AND PAYMENT (COST-SHARING)
(MAR 1989)

(a) The estimated cost for the performance of this contract is \$_____. The contractor agrees to bear without reimbursement by the Government ___% of the cost for performance hereunder. Such cost sharing shall be effected as set forth in paragraph (b) of this clause.

(b) Public vouchers or invoice shall be submitted in an original and five (5) copies and shall show the total cost incurred for the period for which the voucher or invoice is submitted, the cumulative total of costs incurred through the billing period, and the percentage of costs to be reimbursed by the Government. However, the Government is not obligated to reimburse the contractor for the Government's share of the costs in excess of _____% of such amount. The Government shall not be obligated to reimburse the contractor for the Government's share of the costs in excess of \$_____ nor is the contractor obligated by this contract to expend his own funds in excess of \$_____.

4452.217-70 Preference for local contractors in Presidentially declared major disasters or emergencies.

Pursuant to the provisions of Pub. L. 93-288 and 4415.105-71, the following provisions shall be included in each competitive solicitation for on-site disaster relief response:

PREFERENCE FOR LOCAL CONTRACTORS (APR 1984)

In awarding any contract pursuant to this solicitation, the Government shall give preference to local organizations, firms, and individuals residing or doing business primarily in the geographic area identified as the disaster area.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

An offeror for which eligibility is established (local offeror) shall be permitted to meet the lowest price received from an otherwise eligible non-local offeror, provided that the proposed price from the local offeror does not exceed 130 percent of the price of the non-local offeror. The lowest priced local offeror within 130 percent of the lowest non-local offeror shall have the first chance to meet the non-local price. If the local offeror meets the lowest non-local price and is determined to be responsible, award shall be made. If the non-local offer is not met, the next lowest local offeror within 130 percent shall have the chance to meet the lowest non-local price. This process shall continue until award is made to a local offeror within the 130 percent requirement or the supply of local offerors is exhausted and award made to the lowest non-local offeror.

(End of clause)

4452.226-1 Accessibility of meetings, conferences and seminars to persons with disabilities.

Include the following clause in contracts under which the contractor will plan meetings, conferences and seminars which may be attended by persons with disabilities.

ACCESSIBILITY OF MEETINGS, CONFERENCES,
AND SEMINARS TO PERSONS WITH DISABIL-
ITIES (JAN 1989)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the Contracting Officer for approval prior to initiating action. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site one 12' wide space must be set aside for the car of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means must be available to assist disabled attendees. Alternate means must be satisfactory in the judgment of the Contracting Officer.

(2) *Entrances.* (i) "Entrances" shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1" rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30" in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29" wide by 45" long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be

independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30" in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the Contracting Officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30" in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29" wide by 45" long. A space 60" by 60" or 63" by 56" of unobstructed floor space as measured 12" above the floor is acceptable by standard; other layout will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29" wide by 45" long (by standard, the minimum is 3'-0" by 43'-83"), with outswinging door or private curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is conveniently located hereby, whichever is satisfactory to the Contracting Officer.

(ii) Overnight facilities shall provide for the same minimum accessibility requirements as the facility utilized for guest room access from the main entrance area shall be level, ramped at an independently negotiable

4452.227-70

incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29" wide by 45" long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30" in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) Provisions of Services for Sensory Impaired Attendees.

(1) The Contractor, in planning the meeting, conference, or seminar shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide on-site teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there

48 CFR Ch. 44 (10-1-00 Edition)

will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the non-represented group, or groups, is not required.

(Approved by the Office of Management and Budget under control number 3067-0213)

(End of clause)

[55 FR 28208, July 10, 1990]

4452.227-70 Reproduction of reports.

Include the following clause in the contract when the product is a report, data or other written material.

REPRODUCTION OF REPORTS (APR 1984)

Reproduction 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 to be determined by multiplying pages times copies. A production unit is one sheet, size 8½x11 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 on 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 material.

(End of clause)

4452.227-71 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

COORDINATION OF FEDERAL REPORTING SERVICES (APR 1984)

In the event that it is a contractual requirement to collect information from 10 or more public respondents, the provisions of 44 U.S.C. chapter 35 (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain

through the project Officer the required office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefore shall be in writing signed by the Contracting Officer.

(End of clause)

4452.227-72 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product.

PUBLICATION (APR 1984)

(a) Definition. For the purpose of this clause "publication" includes (1) any document containing information intended for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) General. The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or other such means as the Director of the Federal Emergency Management Agency shall determine.

(c) Reports furnished the Government. All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) Publication by Government. The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) Publication by contractor on technical personnel.

(1) Publication in whole or in part of contractor's reports furnished the Government. Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or

any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions and the conditions in paragraph (e)(4) and paragraph (f).

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) Publication, except verbatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder. The contractor or technical personnel may issue a publication concerning or based in whole or in part on the results of the research and development and studies conducted under this contract and may secure copyright therein, but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish, in such manner as he may deem to be in the public interest, the results of such research and development and studies to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

(3) General conditions if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance. If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractor's reports or publication concerning or based in whole or in part on the results of the research and development and

4452.227-72

studies hereunder shall be made without the written consent of the contracting officer.

(4) Copies of contractor and technical personnel publications to be furnished the Government. The contractor or technical personnel will furnish the contracting officer six copies of any publications which are based in whole or in part on the results of the research and development and studies conducted under this contract.

(f) Administratively confidential information. The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record any information or data obtained hereunder from private individuals, organizations, or public

48 CFR Ch. 44 (10-1-00 Edition)

agencies in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) Inclusion of provisions in contractor's agreements. The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study thereunder.

(End of clause)