

DEPARTMENT OF TRANSPORTATION CUMULATIVE CLAIM AND RECONCILIATION STATEMENT	
1. Name of Contractor :	_____
2. Address of Contractor:	_____ _____ _____
3. Contract No.	_____
4. Delivery/Task Order No.	_____
5. The total amount claimed under the above numbered contract, delivery order, or task order number is as follows:	
a. Direct Labor.....	\$ _____
b. Direct Material.....	\$ _____
c. Other Direct Costs.....	\$ _____
d. Overhead.....	\$ _____
e. G&A.....	\$ _____
f. Subcontract Cost.....	\$ _____
g. Total Costs (5a through 5f).....	\$ _____
h. Fixed Fee.....	\$ _____
i. Total Amount Claimed.....	\$ _____
6. Total amount due under the above numbered contract, delivery order, task order is as follows:	
a. Total Amount Claimed.....	\$ _____
b. Total Amount Paid by the Government under Voucher Nos. _____ thru _____	\$ _____
c. Total Amount (if any) Withheld, Disallowed, etc. (as explained on the attached sheet).....	\$ _____
d. Total Amount Due.....	\$ _____
I, _____, as the _____ <small style="display: inline-block; width: 150px; text-align: center;">(Full Name)</small> <small style="display: inline-block; width: 100px; text-align: center;">(Title)</small>	
to the best of my knowledge and belief, the above statements are correct in accordance with the records of the contractor.	
_____ (Signature)	

CHAPTER 13—DEPARTMENT OF COMMERCE

(Parts 1300 to 1399)

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 1301—GENERAL

Subpart 1301.1—Purpose, Authority, Issuance

- Sec.
- 1301.100 Scope of subpart.
 - 1301.101 Purpose.
 - 1301.102 Authority.
 - 1301.103 Applicability.
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 - 1301.104-1 Publication and code arrangement.
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Subparts 1301.2–1301.5 [Reserved]

Subpart 1301.6—Contracting Authority and Responsibilities

- 1301.603–70 Ratification of unauthorized contract awards.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12956, Mar. 30, 1984, unless otherwise noted.

Subpart 1301.1—Purpose, Authority, Issuance

1301.100 Scope of subpart.

This subpart states the relationship of the Commerce Acquisition Regulation (CAR) to the Federal Acquisition Regulation (FAR). This subpart also explains the purpose, authority and issuance of the CAR.

1301.101 Purpose.

(a) Chapter 13 of Title 48 of the Code of Federal Regulations shall be known as the Commerce Acquisition Regulation (CAR).

(b) The purpose of the CAR is to implement and supplement the FAR within the Department of Commerce. Since the CAR is intended to supplement and implement the FAR without paraphrasing or duplicating FAR language,

the CAR should be read in relation to the FAR.

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15329, Apr. 23, 1986]

1301.102 Authority.

The CAR is prescribed by the Department Procurement Executive pursuant to a delegation initiating from the Secretary of Commerce in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law and regulation.

1301.103 Applicability.

The FAR and CAR apply to all acquisitions within the Department of Commerce.

1301.104 Issuance.

1301.104-1 Publication and code arrangement.

(a) The CAR is published in (1) daily issues of the FEDERAL REGISTER, (2) cumulative form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf edition.

(b) The CAR is issued as chapter 13 of title 48 of the CFR.

1301.104-2 Arrangement of regulations.

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

(b) *Numbering.* Where the CAR implements the FAR, the CAR part, subpart, section or further subdivision will be numbered the same as the corresponding FAR part, subpart, section, or further subdivision except that the CAR implementation will be preceded by a 13 or 130 so that there are four numbers to the left of the first decimal. Where the CAR supplements the FAR, supplementing material will be assigned the number 70 and above. The placement of the sequence of 70 numbers in relation to the decimal point will depend on what division of the FAR is supplemented.

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(c) *References and citations.* (2) This regulation may be referred to as the Commerce Acquisition Regulation (CAR).

(3) References to FAR materials will include FAR and the identifying number, for example, FAR 1.402. Reference to CAR materials will consist of the identifying number, for example 1301.402.

1301.104-3 Copies.

(a) Copies of the CAR in FEDERAL REGISTER or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Requests should reference the CAR as chapter 13 of title 48 of the Code of Federal Regulations.

(b) Loose-leaf copies of the CAR are distributed within the Department by the Procurement Executive.

[49 FR 12956, Mar. 30, 1984, as amended at 51 FR 15329, Apr. 23, 1986]

Subparts 1301.2-1301.5 [Reserved]

Subpart 1301.6—Contracting Authority and Responsibilities

1301.603-70 Ratification of unauthorized contract awards.

(a) The Department is not bound by any formal or informal type of agreement or contractual commitment which is made by persons who are not delegated contracting authority. When these unauthorized acts are discovered they shall be immediately reported to the Head of the Contracting Activity concerned. The Head of the Contracting Activity shall:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Decide whether ratification of the unauthorized act is proper, and take appropriate action.

[49 FR 12956, Mar. 30, 1984, as amended at 60 FR 47309, Sept. 12, 1995]

PART 1302 [RESERVED]

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PART 1303—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1303.1—Safeguards

Sec.

1303.101-3 Agency regulations.

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Subpart 1303.3—Reports of Identical Bids and Suspected Antitrust Violations

1303.302-70 Reporting requirements.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12959, Mar. 30, 1984, unless otherwise noted.

Subpart 1303.1—Safeguards

1303.101-3 Agency regulations.

The agency rules implementing Executive Order 11222 are contained in the Department Administrative Order on *Employee Responsibilities and Conduct* (DAO 202-735).

Subpart 1303.2—Contractor Gratuities to Government Personnel

1303.203 Reporting procedures.

Suspected violations of the Gratuities clause shall be reported to the head of the contracting office in writing detailing the circumstances. The head of the contracting office will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Office of Inspector General in accordance with the Department Administrative Order

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on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.3—Reports of Identical Bids and Suspected Anti-trust Violations

1303.302-70 Reporting requirements.

(a) Executive Order 12430 revoked the requirement of Executive Order 10936 to submit a report to the Attorney General on identical bids.

(b) Suspected anti-competitive practices and antitrust law violations as described in FAR 3.301 and FAR 3.303 shall be reported to the general counsel through the Head of the Contracting Activity. A copy of the report shall be sent to the Procurement Executive concurrently with the submission to the general counsel.

Subpart 1303.4—Contingent Fees

1303.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Suspected violations of the Covenant Against Contingent Fees shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

Subpart 1303.5—Other Improper Business Practices

1303.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207-10).

PART 1304 [RESERVED]

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PARTS 1305–1308 [RESERVED]

PART 1309—CONTRACTOR QUALIFICATIONS

Subpart 1309.1—Responsible Prospective Contractors

Sec.

1309.106 Preaward surveys.

1309.106–70 Preaward surveys for ship construction, ship alteration, and ship repair.

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.470–4 Procedures on debarment.

1309.470–7 Procedures on suspension.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

SOURCE: 49 FR 12960, Mar. 30, 1984, unless otherwise noted.

Subpart 1309.1—Responsible Prospective Contractors

1309.106 Preaward surveys.

[51 FR 15330, Apr. 23, 1986]

1309.106–70 Preaward surveys for ship construction, ship alteration, and ship repair.

(a) *General.* The contracting officer shall request a preaward survey of a prospective contractor for contracts involving ship construction, ship alteration, or ship repair, where the cost or price of the contract is anticipated to be in excess of \$100,000, and the information on hand is not sufficient to make a determination regarding responsibility. The contracting officer may request a preaward survey of a prospective contractor for contracts involving ship construction, ship alteration, or ship repair, where the cost or price of the contract is anticipated to be \$100,000 or less, if the circumstances justify the cost of the survey.

(b) *Extent of preaward survey.* The contracting officer shall determine the manner and extent of the preaward survey based upon the specific requirements of the contract. At a minimum, the contracting officer shall request a preaward survey for contracts involving ship construction, ship alteration, and ship repair where the contracting officer cannot affirmatively determine that the prospective contractor's facility is adequate for the work to be performed. For the purpose of this section, the prospective contractor's facility includes the land, buildings, shop spaces, dock facilities, drydock or marine railways, and plant security and safety.

(c) *Examples of specific concern.* The contracting officer shall coordinate efforts with technical and requirements personnel to identify areas of specific concern for the preaward survey. The following examples illustrate areas which may be of specific concern to the preaward survey team, depending on the nature of the work to be performed:

(1) Acceptable facilities and equipment for special production techniques (e.g., unique welding procedures, special test fixtures, or production equipment);

(2) Adequate size and lift capacity for the drydock or marine railway;

(3) Well maintained drydock and lifting equipment and acceptable preventative maintenance of these items;

(4) Acceptable dock master and crew who are experienced in operating the equipment and lifting a vessel of comparable size and weight;

(5) Adequate drydock or pier utilities to support the vessel, including electrical power, steam, potable water, fire fighting capability, sewage disposal, and telephone service;

(6) Responsible subcontractors;

(7) Contractor's demonstrated ability to monitor and coordinate subcontractor performance;

(8) Contractor's demonstrated ability to conduct dock and sea trials;

(9) Contractor's demonstrated ability to protect the vessel and yard and vessel personnel, including safety and security programs or individual plans;

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(10) Adequate secure storage facilities for Government property; and

(11) The depth of water in the navigable waterway and the pier where the vessel will be berthed.

(d) *Preaward survey team.* The contracting officer may use any of the following individuals to form the preaward survey team:

(1) A cost or price analyst or cognizant audit agency for review of the contractor's financial and accounting systems;

(2) Technical or requirements personnel from the cognizant marine center or office of marine operations, for technical, production, or quality assurance evaluations; and

(3) Representatives of the contracting officer for management and administrative evaluations.

(e) *On-site survey.* If it is necessary to conduct a survey at the proposed site where the work is to be performed, the contracting officer shall coordinate the visit with the prospective contractor or subcontractor.

(f) *Reports.* The surveying team shall comply with the applicable reporting requirements of FAR 9.106-4. When using the short-form preaward survey report prescribed in FAR 9.106-4(d), the surveying team shall provide information on the following at a minimum:

(1) The depth of water in the navigable waterway and the pier where the vessel will be berthed;

(2) The condition of the drydock or marine railway where the work is to be performed;

(3) Availability of adequate utilities and services for the vessel;

(4) Evidence of prospective contractor or subcontractor financial problems or poor past performance.

(g) *Contracting officer determination.* Upon completion of the preaward survey, the contracting officer shall determine whether the prospective contractor and subcontractors are responsible.

[51 FR 15330, Apr. 23, 1986]

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.470-4 Procedures on debarment.

Decision making process. Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406-3(b).)

[60 FR 47309, Sept. 12, 1995]

1309.470-7 Procedures on suspension.

Decision making process. Procedures for the decision making process of suspensions are the same as those contained in 1309.470-4 except that an initial decision for suspension results in immediate suspension. (See FAR 9.407-3(b).)

[60 FR 47309, Sept. 12, 1995]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1313—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1313.1—General

1313.106-70 Technical evaluation and written or oral discussion procedure for negotiated small purchases.

(a) *Technical evaluation.* A technical evaluation may be requested for negotiated small purchases, at the discretion of the contracting officer. The manner and extent of the technical evaluation shall be determined by the contracting officer, except that the technical evaluation shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

(b) *Written or oral discussions.* Written or oral discussions may be conducted with all qualified sources which submit quotations for negotiated small purchases. The contracting officer shall determine the manner, extent, and need for written or oral discussions, except that discussions shall not be as formal or as extensive as required for procurements above the small purchase dollar threshold.

[49 FR 12961, Mar. 30, 1984]

PART 1314 [RESERVED]

PART 1315—CONTRACTING BY NEGOTIATION

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

Sec.

1315.413-2 Alternate II.

Subpart 1315.5—Unsolicited Proposals

1315.504 Advance guidance.

1315.506 Agency procedures.

Subpart 1315.6 [Reserved]

Subpart 1315.8—Price Negotiation

1315.805-70 Audit as an aid in proposal analysis.

Subpart 1315.9—Profit

1315.902 Policy.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12961, Mar. 30, 1984, unless otherwise noted.

Subpart 1315.4—Solicitation and Receipt of Proposals and Quotations

1315.413-2 Alternate II.

The procedures described in FAR 15.413-2 may be used if approved by the Head of the Contracting Activity or designee.

Subpart 1315.5—Unsolicited Proposals

1315.504 Advance guidance.

(a) When it appears that a person or firm is interested in making a proposal, that person or firm should be referred to the head of the contracting office concerned who will provide instructions for submission of an unsolicited proposal.

(b) Heads of contracting offices shall provide instructions for submission of unsolicited proposals to each person or firm which expresses an interest in submitting an unsolicited proposal.

[49 FR 12961, Mar. 30, 1984, as amended at 60 FR 47309, Sept. 12, 1995]

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1315.902

1315.506 Agency procedures.

(a) Promptly after receipt of an unsolicited proposal which conforms to this regulation, the head of the contracting office shall forward a copy of the proposal along with instructions for technical evaluation of unsolicited proposals to the appropriate program office for technical evaluation. If more than one Department activity has an interest in a proposal, copies of the proposal shall be circulated to each interested office.

(b) Program offices receiving unsolicited proposals for evaluation shall conduct the evaluation in accordance with this subpart 1315.5, FAR Subpart 15.5, and any additional guidance provided by the Office of Procurement and Federal Assistance.

(c) Program offices shall complete the recommendation and evaluations and submit them along with all copies of the unsolicited proposal, and a written justification for a noncompetitive procurement action if appropriate, to the head of the appropriate contracting office within 60 days of receipt of a proposal for evaluation.

(d) No part of an unsolicited proposal shall be duplicated or circulated outside of the evaluation office. Each unsolicited proposal shall be closely safeguarded to prevent disclosure of any restricted data. Only heads of contracting offices or their designees may duplicate unsolicited proposals and then only to facilitate evaluation by more than one technical evaluation office.

[49 FR 12961, Mar. 30, 1984, as amended at 60 FR 47309, Sept. 12, 1995]

Subpart 1315.6 [Reserved]

Subpart 1315.8—Price Negotiation

1315.805-70 Audit as an aid in proposal analysis.

(a) Preaward audits should not be routinely requested for actions below the dollar threshold specified in FAR 15.805-5. Before requesting audits below the dollar threshold, the contracting office should consider using price or cost analysis techniques, recent audit reports, price negotiation memoranda, and other relevant information regard-

ing the offer to establish the reasonableness of price. However, audits should be considered for proposals below the specified dollar thresholds in the following circumstances:

(1) The contracting officer has reason to doubt the adequacy of the contractor's accounting policies or cost systems;

(2) The contractor has substantially changed its methods or levels of operation;

(3) Previous unfavorable experience indicates that the contractor's estimating, accounting, or purchasing methods may be unreliable; or

(4) The proposal concerns a new product for which cost experience is lacking.

[49 FR 12961, Mar. 30, 1984, as amended at 60 FR 47309, Sept. 12, 1995]

Subpart 1315.9—Profit

1315.902 Policy.

(a) Except as provided in (b) and (c) of this section, a structured approach for determining profit or fee prenegotiation objectives shall be used in the negotiation of all contracts, subcontracts, and contract modifications above \$100,000 where adequate price competition does not exist. A structured approach for determining profit or fee prenegotiation objectives may be used at lower dollar thresholds.

(b) Regardless of whether price competition exists, the structured approach for determining profit or fee prenegotiation objectives is not required for negotiation of contracts, subcontracts, and contract modifications for the following:

(1) Architect—engineering contracts;

(2) Management contracts for operation or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Unusual pricing situations where the structured approach has been determined to be unsuitable. This exception must be justified in writing and signed by the head of the contracting office.

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(c) In many circumstances, an examination of cost and profits is not required. Where adequate price competition exists and in other situations where cost analysis is not required (e.g., established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation), contracts may be awarded without regard to the amount of profit involved.

(d) Additional internal instruction on the use of the structured approach can be found in Procurement Letters or policy manuals issued by the Office of Procurement and Federal Assistance.

PART 1316—TYPES OF CONTRACTS

Subpart 1316.3 [Reserved]

Subpart 1316.4—Incentive Contracts

Sec.
1316.404-2 Cost-plus-award-fee contracts.

Subpart 1316.6 [Reserved]

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12962, Mar. 30, 1984, unless otherwise noted.

Subpart 1316.3 [Reserved]

Subpart 1316.4—Incentive Contracts

1316.404-2 Cost-plus-award-fee contracts.

(d) *Fee determination plans.* The award fee determination plan shall include both technical performance (including scheduling as appropriate) and business management consideration tailored to the needs of the particular situation. The goals and evaluation criteria should be results-oriented. The award fee should concentrate on the end product of the contract. However, equal employment opportunity, small business programs, and functional management areas, such as safety and security, cannot be disregarded and may be appropriately part of the criteria upon which to base the award fee. Specific goals or

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objectives should be established in relation to each performance evaluation criterion against which contractor performance is measured.

Subpart 1316.6 [Reserved]

PART 1317—SPECIAL CONTRACTING METHODS

Subparts 1317.4-1317.5 [Reserved]

Subpart 1317.70—Contracts for Ship Construction, Ship Alteration, and Ship Repair

Sec.
1317.7001 Solicitation provisions and contract clauses.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subparts 1317.4-1317.5 [Reserved]

Subpart 1317.70—Contracts for Ship Construction, Ship Alteration, and Ship Repair

1317.7001 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the following clauses in sealed bid fixed-price solicitations and contracts for ship construction, ship alteration, and ship repair.

(i) Inspection and Manner of Doing Work, 1352.217-90.

(ii) Delivery of the Vessel to the Contractor, 1352.217-91.

(iii) Performance, 1352.217-92.

(iv) Delays, 1352.217-93.

(v) Minimization of Delay Due to Government Furnished Property, 1352.217-94.

(vi) Additional Provisions Relating to Government Property, 1352.217-95.

(vii) Liability and Insurance, 1352.217-96.

(viii) Title, 1352.217-97.

(ix) Discharge of Liens, 1352.217-98.

(x) Department of Labor Occupational Safety and Health Standards for Ship Repairing, 1352.217-99.

(xi) Regulations Governing Asbestos Work, 1352.217-100.

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1317.7001

(xii) Complete and Final Equitable Adjustments, 1352.217-101.

(xiii) Government Review, Comment, Acceptance, and Approval, 1352.217-102.

(xiv) Access to the Vessel, 1352.217-103.

(xv) Documentation of Requests for Equitable Adjustment, 1352.217-104.

(xvi) Change Proposals, 1352.217-105.

(xvii) Lay Days, 1352.217-106.

(xviii) Changes—Ship Repair, 1352.217-107.

(xix) Default—Ship Repair, 1352.217-108.

(2) Unless inappropriate due to contract type, the contracting officer shall insert the clauses listed above in negotiated solicitations and contracts for ship construction, ship alteration, and ship repair.

(b) The contracting officer shall insert a clause substantially the same as the clause at 1352.217-109, Insurance Requirements, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that the contract, or job order, requires work on

parts of a vessel only and the work is to be performed at a plant other than the site of the vessel.

(c) The contracting officer shall insert the clause at 1352.217-110, Guarantees, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(d) The contracting officer shall insert the clause at 1352.217-111, Temporary Services, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(e) The contracting officer shall insert the provision at 1352.217-112, Self-Insurance Information, in solicitations and contracts for ship construction, ship alteration, and ship repair, when the contracting officer determines that it is appropriate to allow offerors the opportunity to self-insure for any or all of the risks set forth in the applicable insurance clauses of the contract.

[52 FR 3807, Feb. 6, 1987]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1319—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1319.2—Policies

Sec.

1319.202-2 Locating small business sources.

Subpart 1319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns [Reserved]

Subpart 1319.70—Contracting Opportunities for Women-Owned Small Businesses

1319.7002 Source identification and solicitation.

1319.7003 Subcontracting opportunities.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1319.2—Policies

1319.202-2 Locating small business sources.

(b) The contracting officer shall send a copy of the requisition form for all procurement actions expected to exceed \$500,000 (\$1,000,000 for construction) to the Office of Small and Disadvantaged Business Utilization, as promptly after receipt as possible. The Office of Small and Disadvantaged Business Utilization shall review the procurement actions and recommend action to the contracting officer. Orders under GSA schedule contracts, orders under Department or Government-wide indefinite delivery contracts, or actions within the scope of the changes, value engineering, or similar

contract clauses are exempt from the requirements of this subsection.

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

Subpart 1319.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns [Reserved]

Subpart 1319.70—Contracting Opportunities for Women-Owned Small Businesses

SOURCE: 51 FR 15331, Apr. 23, 1986, unless otherwise noted.

1319.7002 Source identification and solicitation.

(a) The contracting officer shall include women-owned small businesses on the mailing list for each solicitation which is expected to result in an award in excess of the small purchase dollar threshold whenever there are women-owned small businesses known to be potential suppliers.

[51 FR 15331, Apr. 23, 1986, as amended at 60 FR 47310, Sept. 12, 1995]

1319.7003 Subcontracting opportunities.

(a) Contracting officers shall provide assistance to prime contractors to identify potential women-owned small businesses. Such assistance is intended to aid prime contractors in placing a fair proportion of subcontracts with women-owned small businesses.

(b) The contracting officer shall insert the clause at 1352.219-1, Women-Owned Small Business Sources, in solicitations and contracts where the clause prescribed by FAR 19.708(b) is required (see FAR 52.219-9).

PARTS 1322-1325 [RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1331 [RESERVED]

PART 1332—CONTRACT FINANCING

Subpart 1332.1—General

Sec.

1332.102 Description of contract financing methods.

Subpart 1332.4 [Reserved]

Subpart 1332.6 [Reserved]

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12963, Mar. 30, 1984, unless otherwise noted.

Subpart 1332.1—General

1332.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under Department contracts and subcontracts for construction, alteration, repair, ship construction, ship alteration, and ship repair. For all other contracts, progress payments shall be based on costs except when the head of the contracting office determines that progress payments based on costs cannot be practically employed. In those cases, progress payments based on a percentage or stage of completion may be authorized when the head of the contracting office also determines that adequate safeguards are provided for the administration of those payments.

Subpart 1332.4 [Reserved]

Subpart 1332.6 [Reserved]

PART 1333—PROTESTS, DISPUTES, AND APPEALS

Subpart 1333.1—Protests

Sec.

1333.101 Definitions.

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1333.70-1 Department Board of Contract Appeals.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 51 FR 15331, Apr. 23, 1986, unless otherwise noted.

Subpart 1333.1—Protests

1333.101 Definitions.

Agency protest, as used in this subpart, is one that may be filed with either the Contracting Officer or the Protest Decision Authority but not both.

Assistant General Counsel (AGC), as used in this subpart, means the Assistant General Counsel of the Department of Commerce for Finance and Litigation.

Protest Decision Authority, as used in this subpart, is the agency official above the level of the Contracting Officer who has been designated by the Procurement Executive to handle and issue the formal agency decision resolving the protest.

[64 FR 16652, Apr. 6, 1999]

1333.102 General.

(a) Protests must be received within ten work days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals. Unless the time limit for receiving the protest is extended for good cause, a protest to the contracting activity which is received after the time limit will not be considered. When a timely protest is filed only with the contracting activity, the contracting officer shall take prompt action toward resolution after consulting with the AGC, and notify the protestor in writing of the action taken.

(b) When a protest is filed only with the contracting activity before award, an award shall not be made until the matter is resolved, unless the head of the contracting office makes the determination prescribed in FAR 33.103(f).

(c) When a protest is filed only with the contracting activity after award, the Contracting Officer need not notify the contractor, if the protest can be promptly resolved. If it appears likely that a protest will be filed with the General Accounting Office (GAO), or other administrative forum, the Contracting Officer should promptly notify the contractor in writing and consider suspending contract performance.

[64 FR 16652, Apr. 6, 1999]

1333.103 Protests to the agency.

(a) When a protestor decides to file a protest at the agency level with the Protest Decision Authority, the guidelines set forth in these established agency level protest procedures above the Contracting Officer apply. These procedures are in addition to the existing protest procedures contained in the FAR Part 33.102 and 1333.102 of this subpart.

(1) For purposes of this subpart, a day is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the pe-

riod begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open.

(2) Protesters using these procedures may protest to the Protest Decision Authority who will make the final decision for the Department. Protests shall be addressed to: (Name, title of the person and address to be inserted by the Contracting Officer in the solicitation). The outside of the envelope or beginning of the FAX transmission must be marked "Agency-level Protest". The protestor shall also provide a copy of the protest within 1 day to the responsible Contracting Officer and a copy to: Contract Law Division, Office of the Assistant General Counsel for Finance and Litigation, Department of Commerce, Room H5882, 14th Street and Constitution Avenue, NW, Washington, DC 20230, (FAX Number 202-482-5858).

(3) While a protest is pending at the agency level with the Protest Decision Authority, the protestor agrees not to protest to the GAO or any other external fora. If the protestor has already filed with the GAO or other external fora, the procedures described here may not be used.

(i) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protestor was given the opportunity to be debriefed, whichever date is later. In cases other than those covered in the preceding two sentences, protests shall be filed not later than 14 days after the basis of the protest is known or should have been known, whichever is earlier.

(ii) To be filed on a given day, protests must be received by 4:30 PM current local time. Any protests received after that time will be considered to be

filed on the next day. Incomplete submissions will not be considered filed until all information is provided.

(iii) To be complete, protests must contain the following information:

(A) The protester's name, address, telephone number, and fax number.

(B) The solicitation or contract number, name of contracting office and the Contracting Officer.

(C) A detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was prejudiced.

(D) Copies of relevant documents supporting protester's statement.

(E) A request for ruling by the agency.

(F) Statement as to form of relief requested.

(G) All information establishing that the protester is an interested party for the purpose of filing a protest.

(H) All information establishing the timeliness of the protest.

(iv) All protests must be signed by an authorized representative of the protestor.

(b) Within 14 days after the protest is filed, the Contracting Officer will prepare an administrative report that responds to the issues raised by the protester and addresses any other issues, which, even if not raised by the protester, that may have been identified by agency officials as being relevant to the fairness of the procurement process. The Contracting Officer shall forward this administrative report to the Contract Law Division, Office of the Assistant General Counsel for Finance and Litigation.

(1) For good cause shown, the Protest Decision Authority may grant an extension of time for filing the administrative report and for issuing the written decision. When an extension is granted, the Protest Decision Authority will notify the protester and all interested parties within 1 day of the decision to grant the extension.

(2) Unless an extension is granted, the Protest Decision Authority will issue a decision within 35 days of the protest. The protest decision authority's final decision will be binding on the Department of Commerce and not subject to further appeals.

(3) The Protest Decision Authority shall send a written ruling and a summary of the reasons supporting the ruling to the protester, by "Certified Mail, Return Receipt Requested," and shall forward information copies to the applicable contracting office and the Procurement Executive, Office of Acquisition Management.

(c) Effect of protest on award and performance.

(1) When a protest is filed prior to award, a contract may not be awarded unless authorized by the Head of the Contracting Activity (HCA) based on a written finding that:

(i) The supplies or services are urgently required.

(ii) Delivery or performance would be unduly delayed by failure to make the award promptly.

(iii) A prompt award will be in the best interest of the Government.

(2) When a protest is filed within 10 days after contract award, or 5 days after a debriefing date was offered to the protester under a timely debriefing request in accordance with FAR 15.1004, whichever is later, the Contracting Officer shall immediately suspend performance pending the resolution of the protest within the agency, including any review by an independent higher official, unless continued performance is justified. The HCA may authorize continued contract performance, notwithstanding the protest, based on a written finding that:

(i) Contract performance would be in the best interest of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

(d) The Protest Decision Authority may grant one or more of the following remedies:

(1) Terminate the contract.

(2) Re-compete the requirement.

(3) Issue a new solicitation.

(4) Refrain from exercising options under the contract.

(5) Award a contract consistent with statutes and regulations.

(6) Amend the solicitation provisions which gave rise to the protest and continue with the procurement.

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(7) Such other remedies as the decision-maker may determine are necessary to correct a defect.

[64 FR 16653, Apr. 6, 1999]

1333.104 Protests to GAO.

(a)(1) *General.* A protestor shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation, no later than one day after the protest is filed with the GAO. The envelope containing the complete protest shall be clearly marked "GAO Protest".

(2) The GAO report shall be assembled and organized by the contracting office in accordance with rule 4(d) of the GSBICA Rules of Procedure (48 CFR part 6101) except where rule 4(d) may conflict with GAO procedures.

(b) *Protests before award.* When the contracting activity has received notice of a protest filed directly with GAO, a contract may not be awarded prior to a GAO decision on the protest, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (b)(1) after consulting with the AGC. The head of the contracting office shall notify the AGC when the written finding has been executed so that the AGC can notify GAO. The contracting activity is not authorized to award the affected contract until the AGC has notified GAO of the written finding.

(c) *Protests after award.* When the contracting activity receives notice of a protest filed directly with GAO within 10 calendar days after contract award, the contracting officer shall immediately suspend performance pending a GAO decision on the protest or terminate the awarded contract, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (c)(2) after consulting with the AGC. The head of the contracting office shall notify the AGC when the written finding has been executed so that the AGC can notify GAO. The contracting activity is not authorized to continue contract performance until

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the AGC has notified GAO of the written finding.

[51 FR 15331, Apr. 23, 1986, as amended at 60 FR 47310, Sept. 12, 1995]

1333.105 Protests to GSBICA.

(a)(1) A protestor shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation, on the same day the protest is filed with the GSBICA. The envelope containing the complete protest shall be clearly marked "GSBICA Protest".

[51 FR 15331, Apr. 23, 1986, as amended at 60 FR 47310, Sept. 12, 1995]

1333.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1352.233-2, Service of Protest (JAN 1985) (Deviation FAR 52.233-2), in lieu of the provision at FAR 52.233-2 in solicitations for other than small purchases.

Subpart 1333.2—Disputes and Appeals

1333.213 Obligation to continue performance.

(a) The contracting officer may use Alternate I to the clause at FAR 52.233-1, Disputes, only after the Head of the Contracting Activity has determined in writing that—

(1) Continued performance is necessary pending resolution of any claim arising under or relating to the contract because of unusual circumstances which make continued performance essential to the public health or welfare;

(2) Financing is or will be available for the continued performance; and

(3) The Government's interest is or will be properly secured.

Subpart 1333.70—Department Board of Contract Appeals

1333.70-1 Department Board of Contract Appeals.

The General Services Administration (GSA) Board of Contract Appeals

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serves as the Board of Contract Appeals for the Department.

[49 FR 12964, Mar. 30, 1984]

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1334 [RESERVED]

PART 1336—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1336.2—Special Aspects of Contracting for Construction

Sec.

1336.209 Construction contracts with architect-engineer firms.

Subpart 1336.6—Architect-Engineer Services

1336.602-5 Short selection processes for contracts not to exceed \$10,000.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12964, Mar. 30, 1984, unless otherwise noted.

Subpart 1336.2—Special Aspects of Contracting for Construction

1336.209 Construction contracts with architect-engineer firms.

The head of the contracting office is delegated the authority to approve the exceptional circumstance of awarding a contract for construction of a project to the firm that designed the project. Any approval of this type of award must be justified in writing and signed by the head of the contracting office.

Subpart 1336.6—Architect-Engineer Services

1336.602-5 Short selection processes for contracts not to exceed \$10,000.

Both short selection processes prescribed in FAR 36.602-5 may be used for contracts not to exceed \$10,000. However, in either case the contracting officer shall review the report, approve it and commence negotiations or return it for appropriate revision.

PART 1337 [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1342—CONTRACT ADMINISTRATION

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

Subpart 1342.1—Interagency Contract Administration and Audit Services

1342.102-70 Post award audit reviews.

(a) Generally, the final invoice shall not be approved until a close-out audit has been performed and all outstanding issues have been negotiated or resolved on the following types of contracts of \$100,000 and above:

- (1) Cost-reimbursement type contracts;
- (2) The cost-reimbursement portion of fixed-price contracts;
- (3) Letter contracts which provide for reimbursement of costs;
- (4) Time and materials contracts; and
- (5) Labor-hour contracts.

(b) Even though the \$100,000 postaward audit threshold generally applies, an audit may be requested regardless of the dollar amount when the contracting officer determines that an audit is justified under one of the following circumstances:

- (1) There is some evidence of fraud or waste;
- (2) The contractor's performance under the contract has been questionable;
- (3) The contractor had a high incidence of unallowable costs under a previous contract;
- (4) The contract is with a newly established firm, or a firm which has just begun dealing with the Government.

[49 FR 12965, Mar. 30, 1984; as amended at 60 FR 47310, Sept. 12, 1995]

PART 1345 [RESERVED]

PART 1349—TERMINATION OF CONTRACTS

Sec.
1349.001 Definitions.

Subpart 1349.4—Termination for Default

1349.402-7 Other damages.

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Sec'y of Commerce in Dept. Org. Order 10-5 and Dept. Adm. Order 208-2.

1349.001 Definitions.

(a) *Administrative costs*, as used in this part, means those costs other than excess costs, incurred by the Government as a result of the contractor's default. Administrative costs include but are not limited to:

- (1) Salaries and fringe benefits paid to Government employees who are assigned to a work activity (e.g., procurement activities) as a result of the default;
- (2) Preaward survey expenses incurred in qualifying procurement contractors; and
- (3) Costs incurred in printing and distributing the procurement solicitation.

(b) *Excess costs*, as used in this part, means any costs, other than administrative costs, incurred by the Government in procuring similar supplies or services or performing similar services as a result of the contractor's default.

[51 FR 15332, Apr. 23, 1986]

Subpart 1349.4—Termination for Default

1349.402-7 Other damages.

(a) The contracting officer may recover administrative costs under the default clause when it is in the best interest of the Government. A contracting officer's decision to recover administrative costs must balance the expected cost to the Government of documenting and supporting the assessment with the expected recovery amount.

(b) Documents used to support an assessment of administrative costs must clearly demonstrate that the added costs incurred by the Government were a direct result of the default.

(1) To support administrative labor costs, the contracting officer should keep a record of:

(i) Name, position, and organization of each employee performing work activities as a consequence of the default;

(ii) Dates of work and time spent by each employee on the repurchase;

(iii) Specific tasks performed (e.g., solicitation preparation, clerical);

(iv) Hourly rates of pay (straight time or overtime); and

(v) Applicable fringe benefits.

(2) Travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures may be used to support other administrative costs (e.g., travel, per diem, printing and distribution of the repurchase contract).

(c) If assessment of administrative costs is considered appropriate after review by the AGC, the contracting officer shall make a written demand on the contractor for administrative costs. The written demand shall describe the basis for the assessment and the cost computations. The same demand letter may be used to assess administrative costs and any excess costs. If the contractor fails to make payment after receiving a contracting officer's final decision, the contracting officer shall follow the procedures in subpart 1332.6 and FAR Subpart 32.6 to collect the amount owed the Government.

(d) The recovery of excess or administrative costs does not preclude the Government from exercising other rights or remedies which it may have by law or under the terminated contract.

[51 FR 15332, Apr. 23, 1986]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1352.0—General

Sec.

1352.000 Scope of part.

1352.001 General policy.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Subpart 1352.2—Texts of Provisions and Clauses

1352.217-90 Inspection and manner of doing work.

1352.217-91 Delivery of vessel to the contractor.

1352.217-92 Performance.

1352.217-93 Delays.

1352.217-94 Minimization of delay due to Government furnished property.

1352.217-95 Additional provisions relating to Government property.

1352.217-96 Liability and insurance.

1352.217-97 Title.

1352.217-98 Discharge of liens.

1352.217-99 Department of Labor occupational safety and health standards for ship repairing.

1352.217-100 Regulations governing asbestos work.

1352.217-101 Complete and final equitable adjustments.

1352.217-102 Government review, comment, acceptance, and approval.

1352.217-103 Access to the vessel(s).

1352.217-104 Documentation of requests for equitable adjustment.

1352.217-105 Change proposals.

1352.217-106 Lay days.

1352.217-107 Changes—ship repair.

1325.217-108 Default—ship repair.

1352.217-109 Insurance requirements.

1352.217-110 Guarantees.

1352.217-111 Temporary services.

1352.217-112 Self-insurance information.

1352.233-2 Service of protest.

AUTHORITY: 41 U.S.C. 418b.

SOURCE: 49 FR 12965, Mar. 30, 1984, unless otherwise noted.

Subpart 1352.0—General

1352.000 Scope of part.

This part implements and supplements FAR Part 52 by prescribing specific modifications, alterations, and deviations to FAR solicitation provisions and contract clauses for Department-wide use.

1352.001 General policy.

The Department's policy is to use the FAR and CAR prescribed solicitation provisions and contract clauses unless specific authority for deviations has been obtained. (See 1301.4 for authority to deviate.) The use of uniform solicitation provisions and contract clauses should: provide a less burdensome way for potential contractors to respond to the Government's request for information concerning the evaluation of bids and proposals; expedite solicitation and contract preparation; and facilitate contract negotiation, administration and review. Each solicitation which incorporates contract clauses or solicitation provisions which deviate from those prescribed by the FAR and the CAR must be submitted to the Office of Procurement and Federal Assistance for prior review. The Office of Procurement and Federal Assistance will coordinate requests for approval of these solicitations by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1980 and 5 CFR part 1320.

Subpart 1352.1—Instructions for Using Provisions and Clauses

1352.100 Incorporation by reference.

Contracting officers within the Department shall incorporate solicitation provisions and contract clauses by reference in solicitations and contracts to the maximum extent provided by applicable law and regulation. Incorporation by reference is the listing only by title, regulatory citation, and date of the provision or clause rather than the full text. The full text of the referenced solicitation provision or contract clause is contained in the Code of Federal

Regulations (CFR); chapter 1 of title 48 for FAR provisions and clauses; and chapter 13 of title 48 for CAR provisions and clauses.

Subpart 1352.2—Texts of Provisions and Clauses

SOURCE: 52 FR 3808, Feb. 6, 1987, unless otherwise noted.

1352.217-90 Inspection and manner of doing work.

As prescribed in 1317.7001(a), insert the following clause:

INSPECTION AND MANNER OF DOING WORK (CAR 1352.217-90) (JAN 1987)

(a) All work and material shall be subject to the approval of the Contracting Officer or his duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any contract modification.

(b) Unless otherwise specifically provided for in the contract, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work shall be in accordance with American Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter F 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J 46 CFR) (APR 1982), and U.S.P.H.S., Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or acceptance of the contract, if negotiated), and the best commercial maritime practices, except where military specifications are specified, in which case such standards of material and workmanship shall be followed.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. This Government right is in addition to its rights under any Guarantee clause in this contract. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Of-

ficer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost to the Government. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of 2 years after delivery of the vessel to the Government.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels unless the welder is at the time, qualified to the standards established by the United States Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder may be required to requalify if the Contracting Officer believes there is a reasonable doubt concerning the welder's ability. Welder's qualifications for this purpose shall be outlined in "Marine Engineering Regulations" of the United States Coast Guard. When a welding process other than manual shielded arc is proposed or required, the contractor or fabricator shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the requirements of the "Marine Engineering Regulations" of the United States Coast Guard.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks, or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks or bilge areas under alteration or repair shall be cleaned, washed, and steamed out or otherwise made safe by the Contractor if and to the extent necessary as required by good marine practice or by current OSHA Regulations. The Contracting Officer's Technical Representative (COTR) shall be furnished with a "gas free" or "safe for hot work" or "safe for men" certificate before any hot work or entry is done. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a

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fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting, for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance by the Government of the work performed.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the contractor or in drydock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means, as approved by the COTR.

(h) Whenever practicable, the work shall be performed in a manner which does not interfere with the berthing and messing of personnel attached to the vessel. The Contractor shall ensure that assigned personnel have access to the vessel at all times. It is understood that such personnel will not interfere with the work or the Contractor's workers.

(i) The Government does not guarantee the correctness of the dimensions, sizes, and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by Contractor employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work and its immediate vicinity "broom clean" unless more exactly specified in this contract.

(k) While in drydock or on a marine railway, the Contractor shall be responsible for the closing before the end of working hours, of all valves and openings upon which work is being done by its workers when such closing is practicable. The Contractor shall keep the COTR cognizant of the closure status of all valves and openings upon which the Contractor's workers have been working.

(l) Without additional expense to the Government, the Contractor shall employ specialty subcontractors where required by the specifications or when necessary for satisfactory performance of the work.

(m) When requested by the COTR, the Contractor shall notify the COTR in advance:

(i) Prior to starting inspections or tests; and

(ii) When supplies will be ready for Government inspection.

(n) When advance notification is requested, the authorized COTR shall specify the period and method of notification.

(End of clause)

1352.217-91 Delivery of vessel to the contractor.

As prescribed in 1317.7001(a), insert the following clause:

DELIVERY OF VESSEL TO THE CONTRACTOR
(CAR 1352.217-91) (JAN 1987)

(a) The Government shall deliver the vessel to the Contractor at the location specified in the contract.

(b) If the Contractor's plant is specified, it shall be understood to mean the fairway of the plant. The Contractor shall provide necessary tugs and pilot services to move the vessel from the fairway to the pier or dock and, upon completion of all work, from the pier or dock to the fairway of the plant.

(c) While the vessel is in the possession of the Contractor, any necessary movement of the vessel incidental to the work specified in the contract shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1352.217-92 Performance.

As prescribed in 1317.7001(a), insert the following clause:

PERFORMANCE (CAR 1352.217-92)(JAN 1987)

(a) Upon the issuance of the contract, the Contractor shall promptly commence the work specified in any plans and specifications made a part of the contract, and shall diligently prosecute the work to completion. The Contractor shall not commence work until the contract has been issued.

(b) The Government shall deliver the vessel described in the contract at such time and location as may be specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the contract.

(c) Without additional charge to the Government, and without specific requirement in the contract, the Contractor shall:

(1) Make available at the plant to personnel of the vessel while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards;

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(2) Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of the work as items of Government furnished property in accordance with the Government Property clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, riggings, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for himself and his staff.

(d) Except as otherwise provided in the contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and other things and services necessary for accomplishing the work, subject to Government rights under the Government Property clause.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the contract. Unless otherwise expressly provided in the contract, during the conduct of these trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock or sea trial shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the contract plans and specifications have been met. The Contractor shall also be responsible for the care, installation and removal of any instruments and apparatus furnished by the Government for such trials.

(End of clause)

1352.217-93 Delays.

As prescribed in 1317.7001(a), insert the following clause:

DELAYS (CAR 1352.217-93) (JAN 1987)

When during the performance of this contract the Contractor is required to delay the work on a vessel temporarily, due to orders

or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, fueling, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment may be made in the contract price pursuant to the Changes clause.

(End of clause)

1352.217-94 Minimization of delay due to Government furnished property.

As prescribed in 1317.7001(a), insert the following clause:

MINIMIZATION OF DELAY DUE TO GOVERNMENT FURNISHED PROPERTY (CAR 1352.217-94) (JAN 1987)

(a) In order to assure timely delivery of the vessel under this contract, it is imperative that delay in delivery of such vessel resulting from late, damaged, or unsuitable Government furnished property be held to an absolute minimum. In order to achieve minimization of delay it is agreed that:

(1) Subject to adjustment as provided in paragraph (b) of this clause, the Government shall deliver each item of Government furnished property to the Contractor on or before the date specified in the contract or, if later, in sufficient time for the contractor to deliver the vessel in accordance with the delivery schedule specified elsewhere.

(2) The Government may forego furnishing any item of Government property to the Contractor. In that event, the Contractor shall prepare the vessel in terms of piping, wiring, structure, foundation, ventilation, and any other preinstallation requirements of the item, so that the work on the vessel may continue without delay and disruption resulting from the absence of the item. If the Government does not furnish an item designated as Government furnished property, the parties may be entitled to an equitable adjustment in the contract price, in accordance with the Changes clause for eliminating the requirement to install the Government property item. But, notwithstanding any other clause of this contract, an adjustment shall not be made in the delivery schedule of any vessel if the Government chooses not to furnish the item on or before the delivery date of the item. If the Government subsequently desires the Contractor to install the item prior to delivery of the vessel, a contract modification shall be executed which takes into account any increase in cost or performance time resulting from the installation.

(b) If the delivery date for the vessel is extended for any reason, the latest date for

which the Government must deliver items of Government property shall be deemed to be extended by an equal number of days unless (i) the Contracting Officer agrees in writing that earlier delivery of the items is required, in which case some or all of the Government property shall be extended as agreed rather than on a day-for-day basis, or (ii) a Government property item was the exclusive cause for the extension of the delivery date of the vessel in which case the latest date by which the Government must deliver the item shall not be deemed to be extended unless the parties agree otherwise.

(c) The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. If the Government furnished property is not delivered to the Contractor by such time and the Contractor makes a timely written request, the Contracting Officer shall determine if an equitable adjustment is appropriate. If determined appropriate, the Contracting Officer shall equitably adjust the delivery or performance date, the specifications, the price, or any other contractual provision affected by any such delay, in accordance with the Changes clause.

(d) The Government Property and Minimization of Delay Due to Government Furnished Property clauses contain exclusive remedies. The Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of clause)

1352.217-95 Additional provisions relating to Government property.

As prescribed in 1317.7001(a), insert the following clause:

ADDITIONAL PROVISIONS RELATING TO GOVERNMENT PROPERTY (CAR 1352.217-95) (JAN 1987)

(a) Notwithstanding any requirements to the contrary for the furnishing of material by the Government which may appear in plans, drawings, or other data, the Government shall furnish only the material specifically listed in the specifications as Government furnished property. Any material required for the performance of the contract which does not appear in the specifications as Government furnished shall be furnished by the Contractor.

(b) The Contracting Officer may increase the amount of material to be furnished by the Government and the contract shall be equitably adjusted in accordance with the Government Property clause.

(c) Unless otherwise specifically directed by the Contracting Officer, nonreusable crates and other nonreusable packaging in which Government material is delivered to the Contractor shall become the property of the Contractor upon removal of the packaged or crated material.

(d) Any packaging in preparation for delivery or for other disposal of Government property by the Contractor at the direction or authorization of the Contracting Officer pursuant to paragraph (i) of the Government Property clause shall be provided for by change order and an appropriate adjustment shall be made in the contract price in accordance with the Changes clause.

(e) The vessel, its equipment, movable stores, cargo and other ship's material are not designated Government furnished property under the Government Property clause.

(End of clause)

1352.217-96 Liability and insurance.

As prescribed in 1317.7001(a), insert the following clause:

LIABILITY AND INSURANCE (CAR 1352.217-96) (JAN 1987)

(a) The Contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government owned material and equipment for the repair, completion, alteration or addition to the vessel in the possession of the Contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the Contractor can affirmatively show that such loss or damage was due to causes beyond the Contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the Contractor by exercise of reasonable care was unable to prevent. However, the Contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless (i) the loss or damage is discovered within 90 days after redelivery of the vessel and (ii) loss or damage is affirmatively shown to be the result of the fault or negligence of the Contractor. To induce the Contractor to perform the work for

the compensation provided, it is specifically agreed that the Contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government owned materials and equipment shall in no event exceed the sum of \$300,000. As to the Contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of \$300,000. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the Contractor's servants, employees, agents or subcontractors but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of the Contractor's directors, officers and any of its managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the Contractor brought to determine the Contractor's liability, or for any other purpose.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, or the vessel arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, its or their servants, agents or employees; provided that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of \$300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death,

personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after re-delivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the Contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the Contractor against its liability as ship repairer in the amount of \$300,000, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies. However, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The Contractor shall provide evidence of insurance as required by the Government.

(e) The Contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of the damage shall be given by the Contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The Contractor shall cooperate

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with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses and in the conduct of suits. The Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in this assistance. Except at its own cost, the Contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of clause)

1352.217-97 Title.

As prescribed in 1317.7001(a), insert the following clause:

TITLE (CAR 1352.217-97) (JAN 1987)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part hereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the contract for the performance of the work. However, the Contractor is fully responsible for all such Contractor furnished materials and equipment or the restoration of any damaged work. It is expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the Contracting Officer at any time during the performance of the contract, all such Contractor furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

1352.217-98 Discharge of liens.

As prescribed in 1317.7001(a), insert the following clause:

DISCHARGE OF LIENS (CAR 1352.217-98) (JAN 1987)

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under any contract hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

1352.217-99 Department of Labor occupational safety and health standards for ship repairing.

As prescribed in 1317.7001(a), insert the following clause:

DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIP REPAIRING (CAR 1352.217-99) (JAN 1987)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678), and to the Occupational Safety and Health Standards for Shipyard Employment (29 CFR 1915), promulgated under Pub. L. 85-742, amending Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and adopted by the Department of Labor as occupational safety or health standards under Section 6(a) of the Occupation Safety and Health Act of 1970 (29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States, including any dry dock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1352.217-100 Regulations governing asbestos work.

As prescribed in 1317.7001(a), insert the following clause:

REGULATIONS GOVERNING ASBESTOS WORK (CAR 1352.217-100) (JAN 1987)

If asbestos is encountered, the Contractor shall follow the regulations contained in 29 CFR 1910.1001 (OSHA, Chapter XVII).

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(End of clause)

1352.217-101 Complete and final equitable adjustments.

As prescribed in 1317.7001(a), insert the following clause:

COMPLETE AND FINAL EQUITABLE ADJUSTMENTS (CAR 1352.217-101) (JAN 1987)

Whenever the Contractor submits any claim for an equitable adjustment attributable to any fact or circumstance regarded as a change order whether formal or "constructive," under the Changes clause or any other clause of this contract, such claim shall include all adjustments (including but not limited to adjustments arising out of delays or disruptions or both caused by such change order) to which the Contractor is entitled under this contract. The foregoing requirement shall not preclude the Contractor from revising or resubmitting the claim prior to agreement upon the equitable adjustment for the change order. However, unless otherwise expressly agreed in the aforesaid supplemental agreement, the Contractor shall waive any right under the Changes clause or any other clause of this contract to further equitable adjustments attributable to such facts or circumstances giving rise to the claim upon the execution of the supplemental agreement setting forth the equitable adjustment. In any event, such right shall be deemed to be waived.

(End of clause)

1352.217-102 Government review, comment, acceptance, and approval.

As prescribed in 1317.7001(a), insert the following clause:

GOVERNMENT REVIEW, COMMENT, ACCEPTANCE AND APPROVAL (CAR 1352.217-102) (JAN 1987)

(a) Documentation, including drawings and other engineering products and reports, required by the contract to be submitted for review, comment, acceptance or approval will be acted upon by the Government within 30 calendar days after receipt by the Government, unless another period of time is specified.

(b) Review, comment, acceptance or approval by the Government as required under this contract and applicable specifications shall not relieve the Contractor of its obligation to comply with the specifications and with all other requirements of the contract, nor shall it impose upon the Government any liability it would not have had in the absence of such review, comment and acceptance or approval.

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(End of clause)

1352.217-103 Access to the vessel(s).

As prescribed in 1317.7001(a), insert the following clause:

ACCESS TO THE VESSEL(S) (CAR 1352.217-103) (JAN 1987)

(a) As authorized by the Contracting Officer, a reasonable number of officers, employees and associates of the Government, or other prime Contractors with the Government and their subcontractors shall have admission to the plant and access to the vessel(s) at all reasonable times to perform and fulfill their respective obligations to the Government on a noninterference basis. The Contractor shall make reasonable arrangements to provide access for these personnel to office space, work areas, storage or shop areas, and other facilities and services, reasonable and necessary to performance of their respective duties. All such personnel shall comply with Contractor rules and regulations governing personnel at its shipyard, including those regarding safety and security.

(b) The Contractor further agrees to allow a reasonable number of officers, employees, and associates of offerors on other contemplated work, the same privileges of admission to the Contractor's plant and access to the vessel(s) on a noninterference basis subject to Contractor rules and regulations governing personnel in its shipyard, including those regarding safety and security.

(End of clause)

1352.217-104 Documentation of requests for equitable adjustment.

As prescribed in 1317.7001(a), insert the following clause:

DOCUMENTATION OF REQUESTS FOR EQUITABLE ADJUSTMENT (CAR 1352.217-104) (JAN 1987)

(a) For the purpose of this clause, the term "change" includes not only a change made pursuant to a written order designated as a "change order" but also any act or omission to act on the part of the Government where a request is made for equitable adjustment.

(b) Whenever the Contractor requests or proposes an equitable adjustment to the contract price of not more than \$100,000, for a change or an act or omission on the part of the Government, the request shall include a breakdown of the price adjustment in such form and supported by such reasonable detail as the Contracting Officer may request. As a minimum, the Contractor shall provide a breakdown of direct labor hours, labor dollars, overhead, material, subcontracts, contingencies and profit for each change and a

justification for any extension of delivery date.

(c) Whenever the Contractor requests or proposes an equitable adjustment of \$100,000 gross (aggregate increases and/or decreases) or more to the price of the contract for a change made pursuant to a written order designated as a "change order" or whenever the Contractor requests an equitable adjustment in any amount for any other act or omission to act on the part of the Government, the proposal supporting such request shall contain the following information for each individual item or element of the request:

(1) A description of (i) the unperformed work required by the contract before the change which has been deleted by the change and (ii) the work deleted by the change that already has been completed in whole or in part. The description shall include a list of components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property shall be indicated. A separate description shall be furnished for design and production work. Items of raw material, purchased parts, components, and other identifiable hardware which are made excess by the change, and which are not to be retained by the Contractor, are to be listed for later disposition;

(2) A description of the work necessary to undo work already completed which has been deleted by the change;

(3) A description of the work substituted or added by the change that was not required by the terms of the contract before the change. A list of components and equipment (not bulk material or items) involved, should be included. A separate description shall be furnished for design work and production work;

(4) A description of any interference or inefficiency encountered in performing the change;

(5) A description of disruption attributable solely to the change, which shall include the following information:

(i) A specific description of each element of disruption which states how the work has been, or will be, disrupted;

(ii) The calendar time period when disruption occurred, or will occur;

(iii) The area(s) aboard ship where disruption occurred, or will occur;

(iv) The trade(s) disrupted, with a breakdown of man-hours for each trade;

(v) The scheduling of trades before, during, and after the period of disruption;

(vi) A description of measures taken to lessen the disruptive effect of the change.

(6) The delay in delivery attributable solely to the change;

(7) A description of other work attributed to the change;

(8) A narrative statement of the direct causal relationship between any alleged Government act or omission and the claimed result, cross-referenced to the detailed information required above.

(9) A statement setting forth a comparative enumeration of the amounts "budgeted" for the cost elements, including the materials cost, labor hours, and indirect costs pertinent to the change estimated by the Contractor in preparing his initial and ultimate proposal(s) for this contract, and the amounts claimed to have been incurred, or projected to be incurred, corresponding to each such "budgeted cost" element.

(d) In addition to the information required by paragraph (b), each proposal submitted in support of a claim for equitable adjustment in the amount of \$100,000 or more under any provision of this contract shall contain a duly executed Standard Form 1411 (Contract Pricing Proposal) for each individual claim item. The submitted Standard Form 1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(e) In addition to the information required by paragraph (c), each proposal submitted in support of a claim for equitable adjustment under any provision of this contract shall contain a duly executed SF-1411 (Contracting Pricing Proposal) for each individual claim item. The submitted SF-1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(f) Individual claims for equitable adjustment may not encompass all of the factors listed in (c) above. Accordingly, the Contractor is required to set forth in his proposal information only with respect to those factors which are encompassed in the individual claim for equitable adjustment. In any event, the information furnished hereunder shall be in sufficient detail to permit the Contracting Officer to correlate the claimed increased costs or delay in delivery set forth in the SF-1411 (Contracting Pricing Proposal) with the information submitted pursuant to paragraph (c).

(End of clause)

1352.217-105 Change proposals.

As prescribed in 1317.7001(a), insert the following clause:

CHANGE PROPOSALS (CAR 1352.217-105) (JAN 1987)

(a)(1) In addition to issuing changes under the Changes clause, the Contracting Officer may propose changes within the general scope of this contract, as set forth below. Within 10 days from the date of receipt of any such proposed change, or within such further time as the Contracting Officer may

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allow, the Contractor shall submit a scope of work, plans and sketches for the proposed change, and his estimate of: (i) the cost, (ii) the effect on the delivery date of the vessel, and (iii) the status of work on the ship affected by the proposed change. The proposed scope of work and estimate of the cost shall be in such form and supported by such reasonably detailed information as the Contracting Officer may require.

(2) The Contractor's estimate shall be a firm offer for 30 days from receipt thereof by the cognizant Contracting Officer, unless extended by mutual consent. Within the time limit, the Contractor agrees to either (i) enter into a supplemental agreement covering the estimate as submitted or (ii) begin good faith negotiations at the request of the Contracting Officer, leading to the execution of a bilateral supplemental agreement, if the estimate as submitted is not satisfactory to the Contracting Officer. In either case, the supplemental agreement shall include an equitable adjustment for the preparatory work set forth above.

(b) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the Changes clause, the Contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(c) Concurrently with the submission of any Change Proposal under this contract in which the proposed aggregate cost is \$100,000 or greater, the Contractor shall submit to the Contracting Officer a completed Standard Form 1411. At the time of agreement upon the price of the Change Proposal, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

1352.217-106 Lay days.

As prescribed in 1317.7001(a), insert the following clause:

LAY DAYS (CAR 1352.217-106) (JAN 1987)

(a) Lay day time will be paid for by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railways as a result of any Government change that involves work in addition to that required under the basic contract.

(b) No amount for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

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(d) Payment of lay day time shall constitute complete compensation for all costs except for the direct cost of performing the changed work.

(End of clause)

1352.217-107 Changes—ship repair.

As prescribed in 1317.7001(a), insert the following clause:

CHANGES—SHIP REPAIR (CAR 1352.217-107) (JAN 1987)

(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) Drawings, designs, or specifications, when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;

(2) Method of shipment or packing;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Other requirements within the general scope of the contract.

(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 changed 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 submit any proposal for adjustment (hereafter referred to as proposal) under this clause within 10 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.

(End of clause)

1352.217-108 Default—ship repair.

As prescribed in 1317.7001(a), insert the following clause:

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DEFAULT—SHIP REPAIR (CAR 1352.217-108)
(JAN 1987)

(a) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(1) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(2) Make progress, so as to endanger performance of this contract; or

(3) Perform any of the other provisions of this contract.

(b) If the Government terminates this contract in whole or in part, it may arrange for completion of the work in the manner the Contracting Officer considers appropriate. The Contracting Officer may designate any plant or plants for completion of the work, including the Contractor's plant or plants. If the work is to be completed at the Contractor's plant, the Government may use all tools, machinery, facilities and equipment of the Contractor which the Contracting Officer determines to be necessary. The Contractor will be liable to the Government for any excess costs, other than those costs attributable to changes in the plans or specifications made after the termination date. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor 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 Contractor. 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 Contractor.

(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 Contractor and subcontractor, and without the fault or negligence of either, the Contractor 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 Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (col-

lectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor 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.

(h) 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)

1352.217-109 Insurance requirements.

As prescribed in 1317.7001(b), insert the following clause:

INSURANCE REQUIREMENTS (CAR 1352.217-109)
(JAN 1987)

(a) The Contractor shall procure and thereafter maintain the following insurance:

(1) Ship repairer's legal liability insurance to insure the risks described in paragraph (b) of the Liability and Insurance clause. This insurance shall be for \$300,000.

(2) Comprehensive general liability insurance and automobile insurance to insure the risks described in paragraph (c) of the Liability and Insurance clause. This insurance shall be for \$300,000 on account of any one accident or occurrence with respect to each vessel, boat, and/or barge upon which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies.

(3) Full coverage in accordance with the State Workmen's Compensation law; and

(4) Full coverage in accordance with the United States Longshoremen's and Harbor Worker's Act.

(b) As evidence that it has obtained the insurance specified in (a) above, the Contractor shall furnish the Contracting Officer with a certificate or certificates executed by

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an agent of the insurer authorized to execute such certificates. Such certificates shall be furnished prior to commencement of the work. Each certificate shall state that (name of insurer) has insured (name of Contractor) awarded contract number _____ for repair/alteration of (name of vessel) in accordance with the Liability and Insurance clause and the Insurance Requirements clause contained herein. Each certificate shall set forth that each policy of insurance represented thereby will expire on (date) and that each such policy contains the following clause:

“It is agreed that in the event of cancellation, or any material change in the policy adversely affecting the interest of the Government in this insurance 30 days prior written notice will be given to the Contracting Officer.”

(End of clause)

1352.217-110 Guarantees.

As prescribed in 1317.7001(c), insert the following clause:

GUARANTEES (CAR 1352.217-110) (JAN 1987)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within 90 days from the date of redelivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government in writing, be corrected and repaired by the Contractor or at Contractor expense to the satisfaction of the Contracting Officer. However, the Government shall be entitled to rely upon any guarantee secured by the Contractor or any subcontractor covering work done on materials furnished which exceeds the 90-day period until the expiration. Also, with respect to any individual work item identified and listed as incomplete at the redelivery of the vessel, the guarantee period shall run from the date of completion of such item. If and when practicable, the Government shall afford the Contractor an opportunity to effect such corrections and repairs itself. But, when it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, the corrections and repairs shall be made at Contractor expense at other Government designated locations. Where corrections and repairs are to be made by other than the Contractor, due to non-return of the vessel to the Contractor, the Contractor's liability may be discharged by an equitable deduction in the price of the contract. The Contractor's liability shall only extend for an additional 90-day guarantee period on those defects or deficiencies which it corrected and in no

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event to those for which payment was made. However, this clause does not limit the responsibility or relieve the liability of the Contractor under the Liability and Insurance clause. At the Contracting Officer's option, defects and deficiencies may be left in their uncorrected condition. In that event, the Contractor and the Contracting Officer shall agree on an equitable deduction from the contract price. If the Contractor and the Contracting Officer fail to agree upon an equitable deduction from the contract price, the dispute shall be determined in accordance with the Disputes clause.

(End of clause)

1352.217-111 Temporary services.

As prescribed in 1317.7001(d), insert the following clause:

TEMPORARY SERVICES (CAR 1352.217-111) (JAN 1987)

(a) Temporary services are services incidental to the performance of work which are required in the schedule or specifications to be provided by the contractor. Temporary services may include the furnishing of water, electricity, telephone service, toilet facilities, garbage removal, office space, parking places, or similar facilities as specified in the schedule or specifications.

(b) If performance time is extended due to Government caused delay or causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall have the right to request an equitable adjustment for providing temporary services in excess of the number of estimated days contained in the schedule. Any such equitable adjustment shall not exceed the amount obtained by multiplying the number of excess days by the contractor's unit price contained in the schedule for this item.

(End of clause)

1352.217-112 Self-insurance information.

As prescribed in 1317.7001(e), insert the following provision:

SELF-INSURANCE INFORMATION (CAR 1352.217-112) (JAN 1987)

An offeror who proposes to self-insure for any or all of the risks set forth in the Liability and Insurance clause and the Insurance Requirements clause shall submit satisfactory evidence to permit the Contracting Officer to determine that the offeror's assets are sufficient for the risks set forth in such clauses. The offeror shall submit with its offer 2 certified copies of documents listing

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its assets and liabilities and other information deemed necessary by the offeror or required by the Contracting Officer. For approval of self-insurance under the State Workmen's Compensation Law and the United States Longshoremen's and Harbor Workers' Act, evidence of qualifications as a self-insurer under the applicable compensation statute must be furnished to the Contracting Officer.

(End of provision)

1352.233-2 Service of protest.

As prescribed in 1333.106, insert the following provision:

SERVICE OF PROTEST (JAN 1985) (DEVIATION FAR 52.233-2)

Protests, as defined in 33.101 of the Federal Acquisition Regulation, shall be served on the Contracting Officer and the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation by obtaining written and dated acknowledgment of receipt from the Contracting Officer or the head of the contracting office or designee and from the Contract Law Division of the Office of the Assistant General Counsel for Finance and Litigation located at the U.S. Department of Commerce, Herbert C. Hoover Building, Room H5882, 14th St. between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

[Insert the address of the contracting officer or refer to the number of the block on the Standard Form 33 or 1442, etc., where the address of the contracting office is located.]

(End of provision)

[51 FR 15333, Apr. 23, 1986]

PART 1353—FORMS

Sec.

1353.000 Scope of part.

Subpart 1353.1—General

1353.103 Exceptions.

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

1353.204 Administrative matters.

1353.204-2 Contract reporting (CD 409).

1353.213 Small purchase and other simplified purchase procedures (CD 404).

1353.232 Contract financing.

1353.232-2 (CD 45).

AUTHORITY: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization

Order 10-5 and Department Administrative Order 208-2.

SOURCE: 49 FR 12965, Mar. 30, 1984, unless otherwise noted.

1353.000 Scope of part.

This part supplements FAR Part 53 by prescribing specific exceptions to FAR prescribed forms for Department-wide use.

Subpart 1353.1—General

1353.103 Exceptions.

The Department's policy is to use the FAR and CAR prescribed forms unless prior specific authority for exceptions or alterations has been obtained. Requests for exceptions to FAR or CAR forms shall be submitted to the Office of Procurement and Federal Assistance in the form prescribed by FAR 53.103 (See 1301.4 for authority to deviate).

Subpart 1353.2—Prescription of Forms

1353.200 Scope of subpart.

This subpart prescribes forms for Department-wide use which are exceptions to FAR prescribed forms. This subpart is arranged by subject matter, in the same order and keyed to the parts of the FAR or CAR in which the form use requirements are addressed.

1353.204 Administrative matters.

1353.204-2 Contract reporting (CD 409).

(a) *CD 409 (11/84) Report of Individual Procurement (over \$10,000)*. CD 409 is prescribed for Department-wide use in reporting individual contract actions above \$10,000, in lieu of SF 279.

[50 FR 19364, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.213 Small purchase and other simplified purchase procedures (CD 404).

(e) *CD 404 (1/84) Supply, Equipment of Service Order*. In lieu of OFs 347 and 348, CD 404 is prescribed for Department-wide use as follows:

- (1) To accomplish small purchases
- (2) To issue orders under basic ordering agreements

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(3) To issue orders for paid advertisements

(4) To issue orders for construction or dismantling, demolition, or removal of improvements.

[50 FR 19365, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.232 Contract financing.

A Department approved procurement request form certifies the availability of adequate funds for contract actions (See FAR 32.702). The Department's procurement request form also transmits technical and other specifications

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of the request, administrative approvals and clearances, and information for processing payments.

[50 FR 19365, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.232-2 (CD 45).

CD 45 (3/76) Requisitioning Form. CD 45 is prescribed for Department-wide use in requesting action from the servicing contract office. This form is the vehicle for administrative approvals, clearances, and certification of the availability of adequate funds as specified in FAR 32.702.